

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

DHD Medical, P.C.
(Applicant)

- and -

Esurance Property and Casualty Insurance
Company
(Respondent)

AAA Case No. 17-21-1191-8836

Applicant's File No. 60287

Insurer's Claim File No. NYA0169728

NAIC No. 30210

ARBITRATION AWARD

I, James Hogan, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: EIP

1. Hearing(s) held on 09/24/2021
Declared closed by the arbitrator on 09/24/2021

Bennett Gewurz from Law Office of Gewurz & Zaccaria, PC participated in person for the Applicant

Katelyn Kelly from Law Offices Of Karen L. Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, \$ **1,729.26**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The EIP, a 55 year old man, was injured in a collision on 6/19/19. This claim is for physical therapy services provided to the EIP from 10/21/19 through 1/13/2020, including follow-up office visits, billed at a total of \$1,729.26. Respondent denied the claim based upon a negative IME.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

Applicant's submission:

Applicant is billing for services provided to the EIP as follows:

Physical therapy services billed at \$67.60 for DOS 10/21 and 10/23/19.

Physical therapy services billed at \$67.10 for DOS 10/25, 10/28, 10/29, 11/4, 11/6, 11/8, 11/12, 11/13, 11/14, 11/22, 11/23, 12/5, 12/11, 12/14, 12/20, 12/26/19, 1/3, 1/4, 1/7, 1/11, and 1/13/2020.

A follow-up office visit billed on the CPT code 99214 at \$92.98 for DOS 11/14/19 and 1/8/2020.

As per the AR-1, Applicant billed \$1,729.26; Respondent paid \$0.00, leaving amount in dispute of \$1,729.26.

In addition to a copy of its billing, the Applicant has also provided:

An initial evaluation of the EIP dated 6/26/19. The EIP reported being involved in an MVA on 6/19/19. He presented with complaints of pain in the neck, right shoulder and left knee.

The physical examination included the cervical spine, right shoulder and left knee and reduced ranges of motion were recorded. Motor strength in the left knee extensors was measured at -3/5. DTRs were 1+ in the upper extremities. Sensation was diminished to pinprick in the right C8 dermatome.

The Assessment indicates that the EIP was involved in an MVA on 6/19/19 and sustained a: 1) cervical spine strain/sprain, myofascial pain syndrome. Rule out disc herniation. 2) right shoulder strain/sprain. Rule out internal derangement. 3) left knee, strain/sprain. Rule out internal derangement.

The patient was started on a physical therapy program. In addition, he was referred to a neurologist for further evaluation and management of his post-traumatic headaches.

The EIP was also referred to an orthopedic surgeon for evaluation and management of the right shoulder and left knee pain.

The EIP at follow-up evaluations at the Applicant on 8/1/19, 9/17/19, 11/14/19, 1/8/19 and 3/17/2020.

Each of the follow-up examination had positive findings.

I note that the EIP had EMG/NCV testing of the upper extremities at the Applicant on 8/7/19. The Impression was that the study revealed evidence of right C7 radiculopathy and evidence of sensorimotor poly peripheral neuropathic dysfunction.

Applicant has provided a copy of a report from Barry Katzman, MD, reflecting an evaluation of the EIP. This report is dated 10/14/19. The EIP was complaining of pain to the right shoulder and a left knee.

Dr. Katzman notes that the EIP had an MRI of the right shoulder which showed, among other things, a partial rotator cuff tear.

In addition, he had an MRI of the left knee which showed an ACL tear.

The physical examination of the right shoulder shows that flexion was 90/180. Internal and external rotation were equal, bilaterally. There was tenderness over the rotator cuff. There is no tenderness to palpation of the biceps or AC joints. No atrophy was noted in the supra or infra-spinatis fossas. O'Briens maneuver was negative. Speed and Yergason's maneuvers were negative. Neer and Hawkins impingement signs were positive. External rotation strength with the arm at the side was equal to the other side. Apprehension sign was negative. There was no glenohumeral crepitus. Cross body adduction was negative.

The left knee examination showed that flexion was 90/140. There was no tenderness over the quadriceps or patella tendons. There was tenderness over the medial and lateral joint lines. There was a negative patellar grind with no tenderness under the patella facets. No varus or valgus instability at 0° and 30° of flexion. Lachman's and Anterior Drawer were positive 2+.

The Diagnosis was right shoulder partial rotator cuff tear and a left knee ACL tear, internal derangement.

The Plan showed that the EIP was given an injection into the right subacromial space. He will follow up with Dr. Katzman in one month.

There are follow-up evaluations with Dr. Katzman dated 11/18/19, 12/16/19, 12/30/19, and 1/27/2020.

A review of these reports shows that the patient was indicated for right shoulder surgery since he failed conservative treatment including physical therapy and injections of NSAID's.

The EIP had an initial evaluation at Pain Physicians NY on 12/27/19. This evaluation was performed by Roman Shulkin, MD.

The EIP presented with complaints of pain in the neck, low back, left knee and right shoulder.

The examination notes that the EIP's low back pain was 5/10; the neck pain was 6-7/10; left knee pain with 6/10 and right shoulder pain was 8/10.

The physical examination found tenderness and muscle spasms in the cervical spine and lumbar spine. The ranges of motion in the cervical spine and lumbar spine were indicated as limited, but not quantified.

The examination of the right shoulder found severe tenderness upon palpation over the subacromial and subdeltoid bursae. The range of motion was indicated as restricted, but not quantified.

The examination of the left knee found tenderness over the medial and lateral joint line with mild to moderate diffusion. The range of motion was limited. Crepitus was noted as well as muscle spasm.

SLR was positive for low back pain. Cervical Compression caused pain.

After the examination, Dr. Shulkin administered trigger point injections.

On 1/22/2020, the EIP had a follow-up evaluation at Pain Physicians NY, this time with Leon Reyfman, MD.

The EIP's low back pain was rated 4-5/10; the neck pain was 6-7/10; left knee pain was 6/10; right shoulder pain was 8/10.

After the examination, Dr/ Reyfman wanted to perform an ESI to the cervical spine. This would be accompanied by an epidurography.

His report indicates that the injection was done at Island Ambulatory Surgery Center.

The EIP had a re-evaluation at Pain Physician NY on 2/5/2020. Dr. Reyfman's examination had positive findings. There was an improvement in the cervical spine as the neck pain was now 3-4/10 and intermittent.

The report indicates that Dr. Reyfman would like to have a 2nd cervical ESI. In addition, he would like to administer trigger point injections.

Applicant has provided copies of MRI reports for the EIP cervical spine, right shoulder, left knee and lumbar spine.

Also provided a copies of physical therapy progress notes.

Respondent's submission:

Respondent's position is that the EIP and orthopedic IME on 9/25/19 which resulted in a denial of all future orthopedic and related benefits effective 10/21/19.

IME:

Raghav Polavarapu, MD, an orthopedic surgeon, administered and orthopedic IME to the EIP on 9/25/19.

He summarizes the EIP's accident history. He was taken to the hospital by ambulance after the accident. He had x-rays of the right knee done. He was not given any medication and released the same day.

His initial complaints included right shoulder and left knee pain. It was noted that the x-rays at the hospital were to his right knee.

His subsequent treatment is summarized. He continues to treat 3 times per week. He has had x-rays of the left knee and MRIs of the head, low back, right shoulder and left knee. He denies having any surgery as a result of the accident.

Current Complaints were headaches and low back pain which radiates to the right leg with numbness. He has neck pain as well as pain in her right shoulder and left knee and tingling in the right arm.

The report indicates that the EIP does not take any medication.

He was not working at the time of the accident; he continues to be not working.

The physical examination indicates that the EIP ambulated with a normal gait. He was not in any acute distress and was able to understand and cooperate during the examination.

The ranges of motion were checked with the goniometer.

The cervical spine examination did not find any tenderness to palpation of the cervical paraspinal musculature. No muscle spasms were noted. There was no tenderness to palpation over the trapezius. The range of motion of the cervical spine was quantified as normal in all planes.

The neurological examination of the bilateral upper extremities did not find any motor or sensory deficits. DTRs were present and equal, bilaterally. Muscle strength was 5/5. No atrophy of the muscles was noted. Cervical Compression was negative with no radiation of pain to the back on axial bending.

The neurological examination of the bilateral lower extremities found DTRs at the patella and Achilles were 2+. Muscle strength and over extremities was 5/5, bilaterally. The sensory examination was normal. No atrophy was noted in the muscles of the lower extremities. SLR was negative. The claimant was able to tip toe and heel walk.

The examination of the bilateral shoulders did not find any tenderness on palpation of either shoulder. No effusion was noted and there was no crepitus at the joints of either shoulder. The range of motion of each shoulder was quantified as normal in all planes. There was no impingement sign in either shoulder. Neer's sign was negative; O'Brien's test was negative;

Yergason's test was negative; Speed's test was negative; Hawkin's test was negative and Drop Arm test was negative in each shoulder.

The examination of the bilateral knees indicates that there was no tenderness or effusion noted in either knee. There was no evidence of atrophy of the quadriceps upon inspection. The range of motion was quantified as normal in flexion and extension of each knee. McMurray's test was negative; Lachman's test was negative; Anterior Drawer and Posterior Drawer tests were negative; pivot shift test was negative in each knee. There was no evidence of patella-femoral crepitus in either knee and each knee was stable on valgus and varus stressing.

There is a list of medical records that were reviewed.

The Diagnosis/Impression was cervical spine sprain/strain, resolved; 2) lumbar spine sprain/strain, resolved; 3) right shoulder sprain/strain, resolved; 4) left knee sprain/strain, resolved.

Dr. Polavarapu says that the treatment to date has been reasonable and necessary. There was no medical necessity for physical therapy or orthopedic treatment. There was no medical necessity for any related services.

The claimant's subjective complaints were not correlated with clinical objective findings upon examination. The claimant has returned to his pre-accident status.

He then relates to EIP's injuries to the accident of record.

In the Discussion section of the report, Dr. Polavarapu says that the EIP had subjective complaints but there were no objective findings or any positive orthopedic testing to correlate with those complaints. He concludes that there was no need for any further orthopedic treatment or physical therapy.

On 10/1/19, Respondent issued a global NF-10 denying all future orthopedic and related benefits based upon the 9/25/19 IME administered to the EIP by Dr. Polavarapu. The EOB does not reflect an effective date of the denial.

Additionally, there is no indication that any healthcare providers were notified about this denial as there are none listed on the global NF-10.

Respondent has submitted copies of NF-10s in which it denied the Applicant claims based upon the negative IME.

The Respondent has provided copies of the medical records referenced in the IME report.

At the hearing:

Applicant argued that it was not notified of the global denial. The first notification was received when Applicant received the 12/9/19 NF-10. The amount of billing was \$1,033.38.

In addition, the Respondent did not provide denials for DOS 12/11/19, 12/14/19 and 1/3/2020, and billing totaling \$201.30.

Additionally, the Applicant argued that the IME was unremarkable. The MRI reports had positive findings, yet Dr. Polavarapu determined that the EIP had resolved sprains and strains.

Respondent relied upon the IME and that \$494.58 was denied based upon the IME after the 12/5/19 NF-10 was issued.

FINDINGS:

The Applicant has established its prima facie case.

This claim is for physical therapy services provided to the EIP from 10/21/19 through 1/13/2020, including follow-up office visits, billed at a total of \$1,729.26.

Respondent denied the claim based upon a negative IME.

The global NF-10, issued on 9/15/21, does not indicate that any health care providers were notified of the denial of benefits.

The global NF-10 dated 10/1/19 also does not indicate that any health care providers were notified of the denial of benefits. In addition, it does not contain an effective date of the denial.

The first NF-10 issued to the Applicant, advising of the denial based upon the IME was dated 12/5/19 re DOS 10/21 - 10/25/19 and billing in the amount of \$680.00. However, there is no EOB attached to the NF-10.

Thereafter Respondent denied the Applicant's claims based upon the negative IME as follows:

DOS 10/28 - 10/29/19 - billing in the amount of \$440.00 - denied on 12/5/19 - no EOB issued.

DOS 11/4 - 11/8/19 - billing in the amount of \$660.00 - denied on 12/5/19 - no EOB issued.

DOS 11/12 - 11/14/19 - billing in the amount of \$660.00 - denied on 12/10/19 - no EOB issued.

DOS 11/22 - 11/23/19 - billing in the amount of \$440.00 - denied on 1/2/2020 - no EOB issued.

DOS 12/5/19 - billing in the amount of \$220.00 - denied on 1/8/2020 - no EOB issued.

DOS 12/11 - 12/14/19 - billing in the amount of \$440.00 - denied on 1/2/2020 - no EOB issued.

DOS 12/20/19 - billing in the amount of \$220.00 - denied on 1/14/2020 - no EOB issued.

DOS 12/26/19 - billing in the amount of \$2,200.02 - denied on 1/24/2020 - no EOB issued.

DOS 1/4/2020 - billing in the amount of \$220.00 - denied on 2/5/2020 - no EOB issued.

DOS 1/7 - 1/11/2020 - billing in the amount of \$815.00 - denied on 2/5/2020 - no EOB issued.

DOS 1/13/2020 - billing in the amount of \$220.00 - denied on 2/11/2020 - EOB issued.

As noted above, most of the Respondent's denials were defective in that they did not contain an EOB.

A denial must timely apprise the applicant with a high degree of specificity the grounds upon which the claim is being denied. It cannot be vague or ambiguous. *General Accident Ins. Co. v. Cirucci*, 46 N.Y.2d 862, 414 N.Y.S.2d 512 (Ct. App 1979); *Mega Supply & Billing Inc. v. American Transit Ins. Co.*, 9 Misc.3d 1116(A).

Additionally, the IME was done on 9/25/19 and Applicant has submitted copies of reports after that date showing evaluations of the EIP by the Applicant and other physicians, all of which had positive findings.

Based upon the documents submitted by the Applicant and the defective NF-10s proffered by the Respondent, this claim is awarded.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**

- ☐ The policy was not in force on the date of the accident
- ☐ The applicant was excluded under policy conditions or exclusions
- ☐ The applicant violated policy conditions, resulting in exclusion from coverage
- ☐ The applicant was not an "eligible injured person"
- ☐ The conditions for MVAIC eligibility were not met
- ☐ The injured person was not a "qualified person" (under the MVAIC)
- ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	DHD Medical, P.C.	10/21/19 - 01/13/20	\$1,729.26	Awarded: \$1,729.26
Total			\$1,729.26	Awarded: \$1,729.26

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/22/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

I find that the date for interest to accrue is the date of the filing of the arbitration, 1/22/21 as this is the date when the Applicant's filing was processed and notice of the arbitration sent to the Respondent. As per Insurance Regulation 65-3.9, interest is due until such amount is paid, and without demand therefor.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

The insurer shall pay the Applicant's attorney as per 11 NYCRR 65-4.6 (e). However, if the award and interest is equal to, or less than, Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon 11 NYCRR 65-4.6 (b).

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of Suffolk

I, James Hogan, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/28/2021

(Dated)

James Hogan

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form
Unique Modria Document ID:
8b33063bf8194ef498c7fad0f36ad07e

Electronically Signed

Your name: James Hogan
Signed on: 09/28/2021