

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rockaway Park Medical, P.C. , NU Health
Acupuncture, PC , Aviv Medical, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.

Applicant's File No.

Insurer's Claim File No.

NAIC No.

17-21-1202-3574

430710, 431963,
436915

0594727510000002

35882

ARBITRATION AWARD

I, Lester Hill, 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 10/15/2021
Declared closed by the arbitrator on 10/15/2021

David Forman from Leon Kuchеровsky Esq. participated in person for the Applicant

Daniel Lissauer from Geico Insurance Company participated in person for the
Respondent

2. The amount claimed in the Arbitration Request, **\$ 307.39**, 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

Was the office evaluation conducted on November 9, 2020 properly billed and paid pursuant to the fee schedule? The 30 year-old EIP was involved in a motor vehicle accident on November 6, 2020 and receive treatment for injuries sustained in the accident.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the office evaluation conducted on November 9, 2020 was properly billed and paid pursuant to the fee schedule.

I have reviewed the documents contained in the electronic case folder as of October 15, 2021. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on October 15, 2021.

An Applicant establishes a prima facie showing of its entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and the payment of No-Fault benefits were overdue. *Westchester Medical Center v. Lincoln General Ins. Co.*, 60 A.D. 3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); *Westchester Medical Center v. Clarendon National Ins. Co.*, 57 A.D. 3d 659, 868 N.Y.S. 2d 759 (2d Dept. 2008); *New York and Presbyterian Hosp. v. Allstate Ins. Co.*, 31 A.D. 3d 512, 818 N.Y.S. 2d 583 (2d Dept. 2006); *LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co.*, 30 A.D. 3d 727, 816 N.Y.S. 2d 587 (3d Dept. 2006); *Nyack Hospital v. Metropolitan Property & Casualty Insurance Co.*, 16 A.D.3d 564, 791 N.Y.S. 2d 658 (2d Dept. 2005). The submission of Respondent's NF-10 denial of claim form established that the insurer received the claim referenced therein as having been submitted by the provider and that the insured did not pay the claim. *Lopes v. Liberty Mutual Ins. Co.*, 24 Misc.3d 127 (A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009).

New York's Comprehensive Motor Vehicle Insurance Reparation Act requires an insurance carrier to reimburse an injured party (or his or her assignee) for all "reasonable and necessary expenses" and "medical expenses" arising from the use and operation of the insured vehicle. Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *Countrywide Ins. Co v. 563 Grand Med., P.C.* 50 A.D. 3d 313 (1st Dept. 2008); *A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co.*, 39 A.D. 3d 779 (2d Dept. 2007), if raised in a denial that is (1) timely, *Presbyterian Hosp. in the City of New York v. Maryland Casualty Ins. Co.*, 226 A.D. 2d 613 (2d Dept. 1996), (2) includes the information called for in the prescribed denial of claim form, 11 NYCRR Section 65-3.4 (11); *Nyack Hosp. v. Metropolitan Prop. & Cas. Ins. Co.*, 16 A.D. 3d 564 (2d Dept. 2005); *Nyack Hosp. v. State Farm Mut. Auto Ins. Co.*, 2004 WL 2394038, 2004 NY Slip Op 07663 (2d Dept. Oct.25 2004), and (3) promptly apprises the Applicant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated, *General Accident Ins. Group v. Cirucci*, 46 N.Y. 2d 862, 414 N.Y.S. 2d 512 (1979); *New York University Hosp. Rusk Ins. V. Hartford Acc. & Indem. Co.*, 32 A.D. 3d 458, 2006 NY Slip Op 06223 (2d Dept. 2006).

The EIP was involved in a motor vehicle accident on November 6, 2020. Thereafter, the EIP obtained treatment for multiple medical providers for injuries sustained in the accident.

Prior to the commencement of the hearing, the applicant withdrew the claims for applicants Rockaway Park Medical and Aviv Medical and all claims by Applicant NU Health Acupuncture except for the office evaluation conducted on November 9, 2020 in the amount of \$46.17.

The applicant NU Health Acupuncture conducted an office evaluation on November 9, 2020. The applicant timely submitted a claim for this service.

The respondent denied the claim, citing Acupuncture Ground Rule 7.

Acupuncture Ground Rule 7 states that a licensed acupuncturist may only use CPT codes contained in the Acupuncture Fee Schedule for billing of treatment and that a licensed acupuncturist may not use codes that do not appear in the Acupuncture Fee Schedule.

It is the burden of the respondent to demonstrate that the applicant's claims were in excess of the fee schedule. St. Vincent's Medical Center PC v. GEICO, 2010 NY Slip Op 5215(u), App. Term 2 Dept. 2010.

I find the respondent's denial without merit. Ground Rule 7 limits billing by acupuncturists for treatment to those codes contained in the Acupuncture Fee Schedule. The issue at hand is the office evaluation conducted on November 9, 2020. I do not interpret the new fee schedule provisions as limiting an acupuncturist from billing an evaluation and management code not contained in the Acupuncture Fee Schedule. Ground Rule 7 only applies to treatment and I do not interpret that rule as precluding an acupuncturist from an evaluation of the EIP.

Accordingly, applicant is awarded \$46.17.

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
	Rockaway Park Medical, P.C.	11/11/20 - 11/11/20	\$181.22	Withdrawn with prejudice
	NU Health Acupuncture, PC	11/09/20 - 11/23/20	\$46.17	Awarded: \$46.17
	Aviv Medical, PC	12/28/20 - 12/28/20	\$80.00	Withdrawn with prejudice
Total			\$307.39	Awarded: \$46.17

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/30/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the date of the filing of the AR1 at a rate of 2% per month, simple, ending with the payment of the claim.

C. Attorney's Fees

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

Attorney fees are awarded pursuant to 11 NYCRR 65 - 4.6(e) at a rate of 20% of the awarded claim, including interest, to a maximum of \$1360.00.

- 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 Nassau

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

10/23/2021
(Dated)

Lester Hill

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:
c13a74a63a57e2e52cd924622a07bb42

Electronically Signed

Your name: Lester Hill
Signed on: 10/23/2021