

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Amherst Medical Supply, LLC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-21-1200-7135

Applicant's File No. 013-21-594

Insurer's Claim File No. 0529271462
2CC

NAIC No. 19232

ARBITRATION AWARD

I, Brian Bogner, 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 11/09/2021
Declared closed by the arbitrator on 11/09/2021

Pasquale Bochiechio, Esq. from Pasquale V. Bochiechio, P.C. participated for the Applicant

Julia Okin, Esq. from Abrams, Cohen & Associates, PC participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 806.64**, 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 eligible injured person (EIP) is a forty-one year old who was involved in a motor vehicle accident on December 27, 2018. At issue is reimbursement for a lumbar support orthosis (LSO) that was supplied by the Applicant on February 18, 2019. The Respondent denied reimbursement based on the Applicant's failure to appear for an examination under oath (EUO).

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents uploaded to the ADR Center maintained by the American Arbitration Association. This case was decided based upon the documents

uploaded to the ADR Center and the oral arguments of the parties' representatives at the hearing.

This matter arises from a motor vehicle accident that occurred on December 27, 2018. It is not clear how the accident occurred. The EIP began chiropractic treatment and was eventually prescribed an LSO, which he received on February 18, 2019.

The Applicant's bill was received by the Respondent on April 1, 2019.

On April 18, 2019 and May 22, 2019, the Respondent requested verification seeking:

1. The examination under oath of AMHERST MEDICAL SUPPLY LLC.
2. Names of the individual(s) who physically face-to-face, provided the eligible injured person/assignor the billed for medical supplies. Identify the type of license each of those individuals holds and any specialty of each such individual.
3. State if the person(s) identified in response to verification request "2" immediately above is/are employed by Amherst Medical Supply, LLC. If the answer is in the affirmative, state in what capacity and provide proof of the individual(s)' employment relationship with Amherst Medical Supply, LLC. If the answer is in the negative, identify that person's employer.
4. If the eligible injured person was measured or "fitted" in relation to the medical supplies billed for, provide the name of the individual(s) who measured or "fitted" the eligible injured person/assignor, state the type of license each individual holds and any specialty of each such individual.
5. Are the individual(s) identified in response to question verification request "4" immediately above employed by Amherst Medical Supply, LLC? If the answer is in the affirmative, state in what capacity and provide proof of the individual(s)' employment relationship with Amherst Medical Supply, LLC. If the answer is in the negative, identify that person's employer.
6. Provide a copy of each written contract, fee schedule, service agreement, business associate agreement, and service fee schedule between Amherst Medical Supply, LLC and the person or entity that prescribed the billed for medical supplies.

7. Please state the service fee amount paid by Amherst Medical Supply, LLC to the person or entity that prescribed the billed for each medical supply at issue and state the services provided in exchange for that payment. If a fee was not paid, state so.
8. To the extent not already provided, provide the prescription for each billed medical supply, including for replacement supplies, along with proof that the eligible injured party/assignor received each medical supply.
9. For each billed for medical supply that was manufactured by you and that you contend is not located within the Medical Fee Schedule, provide (a) documentary proof that you manufactured that medical supply; (b) the acquisition cost of each component parts including packaging; (c) the source of each component part; and (d) the cost of labor associated with the manufacture of each medical supply manufactured by you.
10. Please provide the manufacturer's name, make and model number of each of the medical supplies addressed in your bill so that Allstate may compare the "Fee Schedule Treatment Code" used in your claim form against the New York State Medicaid Program for Durable Medical Equipment, to verify that the issued equipment matches the medical provider's prescription, to verify the documented cost per New York State Insurance Department N.Y. Code R. & Reg. 68 (Appendix 17-C, Part F(a)(1)), Regulation 83, to ensure a bona fide transaction occurred as described by The Office of General Counsel opinion letter dated June 16, 2004 and to determine the lesser amount of the fee scheduled CPT code or the price charged to the public for the equipment.

EUOs were subsequently scheduled for May 9, 2019, May 23, 2019 and June 20, 2019.

On May 6, 2019 and June 17, 2019, Applicant's counsel faxed a letter to Respodnent's counsel objecting to the EUOs scheduled for May 9, 2019, May 23, 2019 and June 20, 2019 and advising that the Applicant will not attend. Applicant's counsel stated that the basis for another EUO is unclear, particularly since it had yet to receive the requested verification. Applicant's counsel also stated that all necessary information for the outstanding questions has been provided.

The Applicant did not appear for the EUOs.

On July 6, 2019, the Respondent denied reimbursement for the LSO. The Explanation of Medical Bill Payment states:

These claims are denied as Amherst Medical Supply LLC failed to complete an examination under oath ("EUO") on multiple occasions: 4/25/19, 5/23/19 and 6/20/19, and provide complete verification with regard to this claim. Amherst Medical Supply LLC has breached a condition precedent to coverage with regard to this claim. Allstate has repeatedly sought cooperation from Amherst Medical Supply LLC with regard to this verification. Allstate's last request for Amherst Medical Supply LLC's EUO was made on 5/31/19. That EUO was scheduled to take place on 6/20/19 and Amherst Medical Supply failed to appear. This should not be deemed a waiver of any prior denials issued by Allstate and those remain in effect.

I have previously addressed similar verification requests issued by the Respondent to the Applicant for different claims. *See* AAA Case No.: 17-18-1088-9198. With respect to the request for a further EUO, I decided that:

I find that the Respondent did not have good reasons to request a further EUO. The Respondent already questioned Amy Arnold, the Applicant's office manager, and Dr. Scott Syracuse, one of the Applicant's principles, at length. In addition, the Applicant has provided numerous documents prior to those EUOs and following those EUOs. The Respondent has not submitted any good reason as to why it needs to question the Applicant again and the Respondent's position that it is entitled to an EUO for every claim submitted is inconsistent with the regulations and relevant caselaw.

For the same reasons, I find that the Respondent did not have good reasons to request a further EUO. The Respondent's SIU Affidavit indicates that there are two issues for which the Respondent is seeking a further EUO. The first involves the number of electrodes, lead wires and replacement batteries supplied for use with TENS units and multi-mode stimulators, which is irrelevant to the LSO at issue. The second involves the amount paid to medical providers for fitting durable medical equipment and training patients on the use of durable medical equipment. This information is contained in the service agreements, which can be, and likely already has been, obtained through the written verification process.

Respondent's counsel argued at the hearing that the Applicant failed to respond to the Respondent's remaining verification requests. However, the Respondent denied reimbursement based on the EIP's failure to appear for EUOs. As such, I find that the Respondent waived its right to the written verification.

The Applicant is awarded the amount claimed.

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
	Amherst Medical Supply, LLC	02/18/19 - 02/18/19	\$806.64	Awarded: \$806.64
Total			\$806.64	Awarded: \$806.64

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/15/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Applicant is awarded interest pursuant to the no-fault regulations. *See* 11 NYCRR 65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR 65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." *See* 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

Interest shall run from April 15, 2021, the date this proceeding was filed.

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 an attorney's fee in accordance with 11 NYCRR 65-4.6.

- 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 Erie

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

12/09/2021
(Dated)

Brian Bogner

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:
aa6915005bbdeb88f45da38785913f3d

Electronically Signed

Your name: Brian Bogner
Signed on: 12/09/2021