

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rockaway Complete Chiropractic PC
(Applicant)

- and -

Lyndon Southern Insurance Company
(Respondent)

AAA Case No. 17-21-1219-0450

Applicant's File No. N/A

Insurer's Claim File No. AFL01028665

NAIC No.

ARBITRATION AWARD

I, Michelle Entin, 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: Assignor

1. Hearing(s) held on 04/14/2022
Declared closed by the arbitrator on 04/14/2022

April Mittleman, Esq., from April Mittleman Esq. participated by telephone for the Applicant

Respondent from Lyndon Southern Insurance Company participated by written submission for the Respondent

2. The amount claimed in the Arbitration Request, **\$473.37**, 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

Whether Applicant is entitled to reimbursement of \$473.37 for chiropractic services provided to the injured party/Assignor, a 21 year old male, from November 30, 2018 through December 26, 2018, in connection with injuries sustained by Assignor in an automobile accident which occurred on October 7, 2018.

Respondent contends that it is not a member of the American Arbitration Association.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the written submissions and oral arguments of the parties.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. NYCRR 65-4.5 (o) (1) (Regulation 68-D).

I have reviewed the relevant documents submitted to the Electronic Case Folder as of the date of this hearing and for the reasons as set forth below I find that Applicant is entitled to reimbursement for the chiropractic services at issue.

Assignor, a 21 year old male, was involved in an automobile accident on October 7, 2018. Applicant herein seeks reimbursement for chiropractic treatment of October 25, 2018 through December 26, 2018.

Applicant has established its prima facie showing of entitlement to reimbursement by submitting evidentiary proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits were overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, (2d Dept., 2004).

Respondent submits no denial. Respondent has submitted a one page letter, on the letterhead of Amwins, Specialty Auto, dated September 9, 2021, and addressed to the American Arbitration Association, acknowledging receipt of the claim, and advising that it is not a member of the American Arbitration Association. The letter further notes that the claim was denied for material misrepresentation and that therefore no coverage was afforded for this loss.

Respondent did not appear at the hearing, but submitted the above-referenced letter and nothing further. It is not clear on what basis the Respondent is contending that it is not a member of American Arbitration Association, as out-of-state insurers, even where not licensed to do business in New York State, may still be required to arbitrate claims for first-party benefits under NYS's no fault law "if it is determined that (the out-of-state insurer) controls, is controlled by or under common control by, or ... with an authorized insurer" (*Matter of American Independent Insurance Co. v Nova Acupuncture, PC*, 137 AD3d at 1272).

In the within matter, Respondent has not submitted the relevant policy of insurance, nor has Respondent established lack of control or joint control with an authorized New York State insurer. Moreover, Respondent has not submitted any evidence, substantiating its determination that a material misrepresentation had occurred, such as results of investigation, witness statement, SIU report or underwriter's affidavit as to the materiality of the alleged misrepresentation.

For the aforesaid reasons, I find that Respondent has not substantiated its defenses and accordingly inasmuch as a prima facie case has been established, the claim of Applicant is granted.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

DECISION: AWARD IN FAVOR OF APPLICANT FOR \$473.37 FOR CHIROPRACTIC TREATMENT RENDERED FROM OCTOBER 25, 2018 THROUGH DECEMBER 26, 2018.

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 Complete Chiropractic PC	10/25/18 - 12/26/18	\$473.37	Awarded: \$473.37
Total			\$473.37	Awarded: \$473.37

B. The insurer shall also compute and pay the applicant interest set forth below. 09/15/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

spondent shall pay the Applicant interest computed from the date of filing of the AR-1 at a rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR 65-3.9 (c).

C. Attorney's Fees

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

The insurer shall also pay the Applicant attorney's fees upon the amount awarded and the interest, as calculated in section "B" above, and in accordance with 11 NYCRR 65-4.6(d), for the following claim:

Claim in the amount of \$473.37

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 New York

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

05/15/2022
(Dated)

Michelle Entin

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:
828b46f4002aa1c6b8ca620df4d7aae3

Electronically Signed

Your name: Michelle Entin
Signed on: 05/15/2022