

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Manhattan
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-22-1242-5043

Applicant's File No. ElmoreDa

Insurer's Claim File No. 91400-04

NAIC No. 24309

ARBITRATION AWARD

I, Joseph Endzweig, 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 07/06/2022
Declared closed by the arbitrator on 07/06/2022

Michael Tomforde, Esq. from Dash Law Firm, P.C. participated in person for the Applicant

Chris Fingerhut, Esq. from Law Offices of Rubin & Nazarian participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$912.00**, 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

This arbitration arises out of treatment of a 22 year old male for injuries sustained in a motor vehicle accident occurring on 8/2/20. Applicant seeks reimbursement for an MRI of the lumbar spine performed on 9/22/20 and billed at \$912.00. Respondent denied reimbursement based on the Assignor's testimony at an EUO.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the documentation contained in the Electronic Case Folder which is maintained by the American Arbitration Association.

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As a threshold matter, Respondent brought a Declaratory Judgment Action in Supreme Court, New York County, Index No. 154603/2021, seeking a judgment declaring that Respondent owes no duty to provide No-Fault benefits to the Assignor or the Assignee. By Order entered 4/21/22, the Hon: Lisa Headley J.S.C. granted Respondent's motion for a default judgment. The Order declared the following:

ORDERED, that Plaintiffs motion for a default judgment against the DEFAULTING DEFENDANTS, APS CHIROPRACTIC SERVICES PC, EDEN MEDICAL PC, CARING ANGELS MEDICAL PC, NOURSEEN PHYSICAL THERAPY, PC, GO FLEX REHAB PHYSICAL THERAPY PC, MEDICAL IMAGING OF BRONX PC, PRECISION ANESTHESIA ASSOCIATES, INC., LENCO DIAGNOSTIC LABORATORY, NEW HORIZON SURGICAL CENTER, LLC, SOLOMON HALIOUA, MD, STAND-UP MRI OF MANHATTAN, PC, ASC OF ROCKAWAY BEACH, and HERSCHEL KOTKES MD PC, is granted and it is;

ORDERED, ADJUDGED, and DECLARED that (name redacted) , (name redacted), (Assignor), (name redacted), and (name redacted) alleged injuries and any subsequent No-Fault treatment submitted by DEFAULTING DEFENDANTS, APS CHIROPRACTIC SERVICES PC, EDEN MEDICAL PC, CARING ANGELS MEDICAL PC, NOURSEEN PHYSICAL THERAPY, PC, GO FLEX REHAB PHYSICAL THERAPY PC, MEDICAL IMAGING OF BRONX PC, PRECISION ANESTHESIA ASSOCIATES, INC., LENCO DIAGNOSTIC LABORATORY, NEW HORIZON SURGICAL CENTER, LLC, SOLOMON HALIOUA, MD, STAND-UP MRI OF MANHATTAN, PC, ASC OF ROCKAWAY BEACH, and HERSCHEL KOTKES MD PC, were not causally related to the alleged incident of August 2, 2020, (HEREFORD claim number 91400), and/or did not arise from an insured event, and it is:

ORDERED, ADJUDGED, and DECLARED that HEREFORD owes no duty to provide No-Fault reimbursements to the DEFAULTING DEFENDANTS, APS CHIROPRACTIC SERVICES PC, EDEN MEDICAL PC, CARING ANGELS MEDICAL PC, NOURSEEN PHYSICAL THERAPY, PC, GO FLEX REHAB PHYSICAL THERAPY PC, MEDICAL IMAGING OF BRONX PC, PRECISION ANESTHESIA ASSOCIATES, INC., LENCO DIAGNOSTIC LABORATORY, NEW HORIZON SURGICAL CENTER, LLC, SOLOMON HALIOUA, MD, STAND-UP MRI OF MANHATTAN, PC, ASC OF ROCKAWAY BEACH, and HERSCHEL KOTKES MD PC, arising out of the alleged incident of August 2, 2020, (HEREFORD claim number 91400), and it is:

ORDERED, ADJUDGED, and DECLARED that HEREFORD, by reason of no coverage, since (name redacted), (name redacted),(Assignor), (name redacted), and (name redacted) alleged injuries and subsequent No-Fault treatment submitted by the DEFAULTING DEFENDANTS, APS CHIROPRACTIC SERVICES PC, EDEN MEDICAL PC, CARING ANGELS MEDICAL PC, NOURSEEN PHYSICAL THERAPY, PC, GO FLEX REHAB PHYSICAL THERAPY PC, MEDICAL IMAGING OF BRONX PC, PRECISION ANESTHESIA ASSOCIATES, INC., Lenco DIAGNOSTIC LABORATORY, NEW HORIZON SURGICAL CENTER, LLC, SOLOMON HALIOUA, MD, STAND-UP MRI OF MANHATTAN, PC, ASC OF ROCKAWAY BEACH, and HERSCHEL KOTKES MD PC, were not casually related to the alleged incident of August 2, 2020, (HEREFORD claim number 91400), and/or did not arise from an insured event, is not required to pay any sums, monies, damages, awards and/or benefits to the DEFAULTING DEFENDANTS, APS CHIROPRACTIC SERVICES PC, EDEN MEDICAL PC, CARING ANGELS MEDICAL PC, NOURSEEN PHYSICAL THERAPY, PC, GO FLEX REHAB PHYSICAL THERAPY PC, MEDICAL IMAGING OF BRONX PC, PRECISION ANESTHESIA ASSOCIATES, INC., Lenco DIAGNOSTIC LABORATORY, NEW HORIZON SURGICAL CENTER, LLC, SOLOMON HALIOUA, MD, STAND-UP MRI OF MANHATTAN, PC, ASC OF ROCKAWAY BEACH, and HERSCHEL KOTKES MD PC, including but not limited to Mandatory Personal Injury Protection No-Fault, Additional Personal Injury Protection, Bodily Injury and Property Damage Liability, and Supplemental Uninsured/Underinsured Motorist Coverage, for any treatment allegedly rendered to ... Assignor, in connection with the alleged incident of August 2, 2020, (HEREFORD claim number 91400), and it is:

ORDERED that the Clerk is directed to enter judgment as against the DEFAULTING DEFENDANTS, APS CHIROPRACTIC SERVICES PC, EDEN MEDICAL PC, CARING ANGELS MEDICAL PC, NOURSEEN PHYSICAL THERAPY, PC, GO FLEX REHAB PHYSICAL THERAPY PC, MEDICAL IMAGING OF BRONX PC, PRECISION ANESTHESIA ASSOCIATES, INC., Lenco DIAGNOSTIC LABORATORY, NEW HORIZON SURGICAL CENTER, LLC, SOLOMON HALIOUA, MD, STAND-UP MRI OF MANHATTAN, PC, ASC OF ROCKAWAY BEACH, and HERSCHEL KOTKES MD PC.

I note that the Assignee and the Assignor herein were named in the above order.

In *Ava Acupuncture PC, et al. v. NY Central Mutual Fire Insurance Co.*, 2012 NY Slip Op. 50233(U) 34 Misc. 3d 149(A) (App. Term 11th and 13th Jud. Dists., February 9, 2012) the court noted that orders entered for declaratory judgments on default will bar related actions under the doctrine of *res judicata* so long as that order or judgment taken by default has not been vacated. To not give collateral estoppel effect to the declaratory judgment would destroy or impair rights established by the order rendered by the Supreme Court in the declaratory judgment action. See *GBI Acupuncture, P.C. v. Nationwide Ins.*, 48 Misc. 3d. 131 (A), 2015 N.Y. Slip Op. 51048 (U) (App. Term, 2nd

Dept., July 7, 2015). In this case there is no evidence in the record that the subject Order was vacated.

Accordingly, Applicant's claim is denied in its entirety.

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 claim is DENIED in its entirety

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

State of New York
SS :
County of Westchester

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

07/06/2022
(Dated)

Joseph Endzweig

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:
2941d33cfc5321d4aad31b46a6d0af6

Electronically Signed

Your name: Joseph Endzweig
Signed on: 07/06/2022