

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Apple Pain Management PLLC
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-21-1231-4322
Applicant's File No. SBG-11601-2484003
Insurer's Claim File No. 83541-02
NAIC No. 24309

ARBITRATION AWARD

I, Corinne Pascariu, 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 09/28/2022
Declared closed by the arbitrator on 09/28/2022

Jeremy Davis, Esq. from Sanders Grossman Aronova PLLC participated in person for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$1,630.40**, 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 Assignor is a male who was 31-years-old when he was injured as a passenger in a vehicle involved in a motor vehicle accident on April 17, 2019. Assignor presented to Applicant for cervical epidural steroid injections on November 6, 2019, and December 4, 2019. Respondent denied reimbursement on the ground that that Applicant failed to appear at examinations under oath (EUOs) on August 22, 20019 and September 4, 2019.

Issues

Whether Respondent properly denied Applicant's claim on the ground that Assignor failed to appear at the scheduled EUOs.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center maintained by the American Arbitration Association as of the date of this award and considered the oral arguments of the parties' representatives. There were no witnesses.

To receive payment of a claim, Applicant "need only file a 'proof of claim' (11 NYCRR 65.11(k)(3)), and the insurers are obliged to honor it promptly or suffer the statutory penalties." Dermatossian v. New York City Transit Authority, 67 N.Y.2d 219, 224, 501 N.Y.S.2d 784, 787 (1986). Furthermore, the No-Fault law requires a carrier to either pay or deny a claim for No-Fault benefits within thirty (30) days from the date an applicant supplies proof of claim. See, Insurance Law §5106 (a) and 11 NYCRR 65-3.8.

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a prima facie case with the respect to the services that are the subject of this arbitration. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 14 N.Y.S.3d 283 (2015).

Respondent's denials were timely issued.

As a preliminary matter, the Respondent made a late submission in the form of EUO bust statements on September 26, 2022, which is two days prior to the hearing and beyond the submission filing deadline designated by the American Arbitration Association. 11 NYCRR 65-4(b)(3)(iii). Although I do not adhere to the "rocket docket" rule strictly, I do require that the parties perfect their arguments and submissions at least thirty (30) days prior to the hearing date. In this case, Respondent's EUO bust statements were not submitted at least 30 days prior to the hearing date. There must be finality to the submission of documents. I find no extraordinary reason to accept this late submission. An arbitrator acts within his discretion in refusing to entertain late submissions. As such, this late submission is precluded. Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S. 762 (2d Dept. 2009).

Failure to appear at two EUOs

Respondent's evidence established that the claims were timely denied based upon the Assignor's failure to attend two EUOs.

Pursuant to 11 NYCRR 65-1.1, Conditions, "No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage." Further, the Regulations state that "the eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company when, and as often as, the Company may reasonably require."

The appearance at an EUO is a condition precedent to the insured liability on the policy, and an insurer may deny a claim retroactively to the date of loss for a claimant's failure to attend IMEs, "when, and as often as, the [insurer] may reasonably require." Stephen Fogel Psychological, P.C., v. Progressive Cas. Ins. Co., 35 AD3d 720 (2nd Dept., 2006).

To establish its defense, an insurer must demonstrate that two separate requests for the EUOs were properly mailed to the assignor and the assignor failed to appear for both of the EUOs. The insurer must also establish that the scheduling letters were properly addressed and contained the requisite language regarding reimbursement of travel expenses and lost wages.

Respondent submitted two EUO scheduling letters. The first is dated July 30, 2019 scheduling an EUO for August 22, 2019 and the second is dated August 23, 2019, scheduling an EUO for September 4, 2019. Respondent submitted certified mailing certificates to establish that the August 23, 2019 letter were mailed to the assignor. However, there is no evidence that the July 30, 2019 was sent. Likewise, Respondent does not have admissible evidence to establish that assignor failed to present to the EUOs.

Accordingly, I find Respondent's evidence fails to demonstrate that Assignor failed to appear for two scheduled EUOs. I award \$1630.40 in satisfaction of the claim.

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
	Apple Pain Management PLLC	11/06/19 - 11/06/19	\$815.20	Awarded: \$815.20
	Apple Pain Management PLLC	12/04/19 - 12/04/19	\$815.20	Awarded: \$815.20
Total			\$1,630.40	Awarded: \$1,630.40

B. The insurer shall also compute and pay the applicant interest set forth below. 03/24/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be calculated from the date listed above, until the date that payment is made at two percent per month, simple interest on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

Attorney's Fees shall be calculated pursuant to the amended terms, as follows: 20 percent of the amount of first-party benefits, plus interest thereon, subject to a maximum fee of \$1,360. [11 NYCRR §65-4.6(d)]. There is no minimum fee.

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 Jersey, Bergen County

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

10/07/2022

(Dated)

Corinne Pascariu

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:
b8fb80136eb7a31727dc95e2562fc9cc

Electronically Signed

Your name: Corinne Pascariu
Signed on: 10/07/2022