

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Neofitos Stefanides, MD.PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-22-1247-1755

Applicant's File No. N/A

Insurer's Claim File No. 1027616-02

NAIC No. 16616

ARBITRATION AWARD

I, Karen Fisher-Isaacs, 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 01/10/2023
Declared closed by the arbitrator on 01/10/2023

Marc Schwartz from Marc L. Schwartz P.C. participated in person for the Applicant

Anthony Troise from American Transit Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,725.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant, by counsel, amended the amount of the claim to \$2,206.42 consistent with Respondent's fee coder's affidavit. Respondent withdrew its fee schedule defense.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Applicant seeks reimbursement of charges for an initial consultation, x-rays and injections performed on September 27, 2018 and follow up office visits and injections performed through February 27, 2020 for Assignor, a 58-year old male, in connection with treating injuries following a May 2, 2018 motor

vehicle accident. Respondent denied Applicant's first 11 bills stating, "This claim is subject to the Independent Livery Fund for which the Workers' Compensation Rules and Regulations are applicable. As such medical benefits are denied because the claimant returned to work prior to the rendered services." Applicant's last two bills (\$185.96 in dispute) for follow up evaluations performed on January 16, 2020 and February 27, 2020 were denied based on Dr. Stuart Hershon's November 27, 2019 IME.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the American Arbitration Association's ADR Center as of the date of the hearing in this matter and have considered all pertinent documents contained therein for the purpose of rendering this award.

Applicant seeks reimbursement in the amended amount of \$2,206.42 for medical services provided between September 27, 2018 and February 27, 2020 for Assignor, a 58- year old male, in connection with treating injuries sustained in a motor vehicle accident on May 2, 2018. Respondent timely denied Applicant's first 11 bills asserting that the claim was subject to the Independent Livery Fund and Respondent timely denied the remainder of Applicant's claim based on an IME report.

As a threshold matter, I find that Applicant has established its prima facie case as Applicant has met the requirements enunciated in *Ave T MPC Corp. v Auto One Ins. Co.*, 32 Misc 3d 128[A], 2011 NY Slip Op 51292[U] [App Term, 2d, 11th & 13th Jud Dists 2011]). The Court held that "A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission to the defendant of a claim form, proof of the fact and the amount of the loss sustained, and proof that the defendant either failed to pay or deny the claim within the requisite 30-day period, or issued a timely denial of claim that was conclusory, vague or without merit as a matter of law (see Insurance Law § 5106 [a]; *Westchester Med. Ctr. v Nationwide Mut. Ins. Co.*, 78 AD3d 1168 [2010]; see also *New York & Presby Hosp v. Allstate* 31 AD3d 512 [2006])."

INDEPENDENT LIVERY FUND

This arbitration concerns 13 bills. Respondent's evidence established that it denied the first 11 stating:

This claim is subject to the Independent Livery Fund for which Workers' Compensation Rules and Regulations are applicable. As such, medical benefits are denied because the claimant returned to work prior to the rendered services.

Applicant's counsel correctly argued that there is no merit to Respondent's defense regarding these first 11 bills because Applicant's claim could not possibly be subject to the Independent Livery Fund. The Independent Livery Drivers Benefit Fund (ILDBF) is a nonprofit corporation established by New York State legislation to ensure coverage of certain catastrophic injuries. Article 6-G of the Executive Law created a livery drivers fund for livery drivers who are injured during the course of their employment. The dispatch must be a member of the fund which is underwritten by Hereford. The dispatch must be a member of the fund on the day of the accident.

Most significantly, the injuries covered by the ILDBF are injuries resulting in death; amputation or loss of arm, leg, hand or foot, multiple fingers, index finger, multiple toes, ear, nose; paraplegic; quadriplegic; total, permanent blindness and deafness; or as a result of a crime against livery driver.

Again, while Assignor underwent chiropractic treatment, injection therapy and two left arthroscopic shoulder surgeries, Assignor's claimed injuries do not even begin to approach the catastrophic level required by the act creating the ILDBF nor is there any evidence that Assignor was the victim of a crime. Here, Assignor would be covered by No-Fault since the circumstances set forth in the Executive Law are not applicable.

Respondent offered nothing to refute Applicant's arguments. Accordingly, Applicant is awarded \$2,020.46 for this first part of its claim.

MEDICAL NECESSITY DEFENSE

Respondent's evidence established that it timely denied Applicant's billing for follow up examinations performed on January 16 and February 27, 2020 based on Dr. Stuart Hershon's November 27, 2019 orthopedic IME. Dr. Hershon noted that Assignor complained of neck, low back, left shoulder, left wrist and left knee pain at the time of the IME. Dr. Hershon's physical examination of Assignor's cervical/lumbar spine, left/right shoulders, left/ right wrists and left knee was unremarkable. Range of motion testing was full, there were no objective finding such as spasm, crepitus, atrophy, swelling or sensory loss and all provocative orthopedic testing was negative. Based on the lack of objective findings, Dr.

Hershon diagnosed resolved cervical and lumbar spine sprain/strain, resolved bilateral wrist/hand sprain, resolved left knee sprain and resolved left shoulder arthroscopic surgery x2.

The law is well settled that the burden is on the insurer to prove that medical treatment performed was not medically necessary. (See A.B. Medical Services PLLC v. Geico Insurance, 2 Misc.3d 26, 773 N.Y.S.2d 773 [App. Term, 2nd & 11th Jud. Dists. 2003]; King's Medical Supply Inc. v. Country-Wide Insurance Company, 783 N.Y.S.2d at 448). I find Dr. Hershon's IME report evidencing a thorough IME sufficient to meet this burden.

Once Respondent, through Dr. Hershon's report, established the merits of its challenge to the medical necessity of the post IME exams, the burden shifted. Now, Applicant was bound to present competent medical proof establishing the medical necessity for the post IME treatment, and to do so by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U), 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (See, Insurance Law Section 5102).

Applicant relied on its November 21, 2019 and January 16, 2020 examination reports. On November 21, 2019 Assignor reported that physical therapy was alleviating his left shoulder pain significantly but that he still had pain. Dr. Stefanides noted that range of motion testing was painful with flexion, horizontal adduction and internal rotation. He diagnosed bursitis, left shoulder and noted that Assignor should continue with physical therapy. At his January 16, 2020 follow up exam, Assignor complained of left shoulder and neck pain. Dr. Stefanides' physical examination of Assignor's cervical spine revealed tenderness and moderately decreased range of motion testing with motor weakness due to pain. His examination of Assignor's left shoulder revealed subacromial tenderness, decreased strength and positive impingement testing.

I find Applicant's evidence, contemporaneous medical reports, sufficient to refute Dr. Stefanides's determination that Assignor's accident-related injuries had fully resolved as of the IME date.

Accordingly, Applicant is awarded \$2,206.42, the entirety of its amended 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	Amount Amended	Status
	Neofitos Stefanides, MD.PC	09/27/18 - 09/27/18	\$1,050.00	\$236.94	Awarded: \$236.94
	Neofitos Stefanides, MD.PC	09/27/18 - 09/27/18	\$700.00	\$474.85	Awarded: \$474.85
	Neofitos Stefanides, MD.PC	10/15/18 - 10/15/18	\$150.00	\$92.98	Awarded: \$92.98
	Neofitos Stefanides, MD.PC	11/12/18 - 11/12/18	\$125.00	\$64.07	Awarded: \$64.07
	Neofitos Stefanides, MD.PC	02/18/19 - 02/18/19	\$850.00	\$384.52	Awarded: \$384.52

	Neofitos Stefanides, MD.PC	04/01/19 - 04/01/19	\$350.00	\$150.24	Awarded: \$150.24
	Neofitos Stefanides, MD.PC	07/08/19 - 07/08/19	\$400.00	\$187.68	Awarded: \$187.68
	Neofitos Stefanides, MD.PC	08/19/19 - 08/19/19	\$150.00	\$92.98	Awarded: \$92.98
	Neofitos Stefanides, MD.PC	09/10/19 - 09/10/19	\$150.00	\$92.98	Awarded: \$92.98
	Neofitos Stefanides, MD.PC	05/20/19 - 05/20/19	\$350.00	\$150.24	Awarded: \$150.24
	Neofitos Stefanides, MD.PC	11/21/19 - 11/21/19	\$150.00	\$92.98	Awarded: \$92.98
	Neofitos Stefanides, MD.PC	01/16/20 - 01/16/20	\$150.00	\$92.98	Awarded: \$92.98
	Neofitos Stefanides, MD.PC	02/27/20 - 02/27/20	\$150.00	\$92.98	Awarded: \$92.98
Total			\$4,725.00		Awarded: \$2,206.42

B. The insurer shall also compute and pay the applicant interest set forth below. 04/21/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the Applicant the amount of interest computed from the date of filing (noted above) 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(e).

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, subject to a maximum fee of \$1,360.00, in accordance with 11 NYCRR 65-4.6(d).

- 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 Kings

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

01/23/2023
(Dated)

Karen Fisher-Isaacs

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:
ecb2dff6458daed19d4d92a12eeb5e4b

Electronically Signed

Your name: Karen Fisher-Isaacs
Signed on: 01/23/2023