

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Relief Physical Therapy PT PC  
(Applicant)

- and -

State Farm Fire & Casualty Company  
(Respondent)

AAA Case No. 17-22-1247-2770

Applicant's File No. LIP-17970

Insurer's Claim File No. 38-C117-8N0

NAIC No. 25143

**ARBITRATION AWARD**

I, Bernadette Connor, 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 04/27/2023  
Declared closed by the arbitrator on 04/27/2023

Lee-Ann R. Trupia, Esq. from Law Office of Ilya E. Parnas participated virtually for the Applicant

Christine Di Gregorio, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$530.93**, 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

Applicant seeks reimbursement for physical therapy treatment provided to the Assignor, a 37-year-old male, who sustained injuries in a motor vehicle accident on November 13, 2019. The dates of service at issue are April 22, 2020 through May 7, 2020. Respondent denied payment based on the Assignor's failure to appear for examinations under oath (EUOs) that were scheduled for January 22, 2020 and February 12, 2020.

4. Findings, Conclusions, and Basis Therefor

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms to the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio*, 100 NY2d 854, 768 NYS2d 423 (2003).

Applicant has established a prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; *Damadian MRI in Canarsie, P.C. v. General Assurance Company*, 2006 NY Slip Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006 Appellate Term, 2d Department); *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3d 128, 784 N.Y.S. 2d 918 (2003).

The prescribed Mandatory Personal Injury Protection Endorsement, set forth in 11 NYCRR 65-1, provides in the section titled "Conditions:"

*Action Against Company. 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...*

*Proof of Claim; Medical, Work Loss, and Other Necessary Expenses...Upon request by the Company, the eligible injured person or that person's assignee or representative shall: (b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same...*

Appearance at a scheduled EUO is a condition precedent to coverage. See 11 NYCRR 65-1.1; *Mega Supplies Billing, Inc. v. State Farm Fire & Cas. Co.*, 2012 NY Slip Op 51014 (U)(App Term 2d, 11th and 13th Jud Dists., May 14, 2012); *Viviane Etienne Med. Care, P.C. v. State Farm Mut. Auto Ins. Co.*, 2012 NY Slip Op 50579 (U) (App Term 2d, 11th & 13th Jud Dists., April 2, 2012). The provider's failure to comply with a properly requested EUO allows for the denial of said provider's claim for No-Fault benefits. *Dover Acupuncture, P.C. v. State Farm Mut. Auto Ins. Co.*, 28 Misc. 3d 140 (A), 2010 NY Slip Op 51605 (U) (App Term 1 Dept. Sept. 17, 2010).

To prevail, Respondent must show that it mailed the notices to Applicant and that Applicant failed to appear. See *Canarsie Family Medical Practice, PLLC v. American Transit Insurance Co.*, 26 Misc.3d 132 A (2010); *Matter of Boro Chiropractic, P.C. v.*

*State Farm Fire and Casualty Co.*, 39 Misc. 3d 1228(A), 39 N.Y.S.2d 1228 (Table), 2013 N.Y. Slip Op. 50791 (U), 2013 WL 2169008 (Civ. Ct. Kings Co., May 17, 2013).

After reviewing the evidence presented, I find in favor of Applicant. Respondent did not submit any evidence to support its defense. The record is devoid of EUO scheduling letters sent to the Assignor, proof of mailing of the letters, and evidence to demonstrate that the Assignor failed to appear for the EUOs.

At the hearing of this matter, counsel for Respondent requested additional time to submit evidence to support Respondent's defense. I denied the request as it would have been prejudicial Applicant's position.

Accordingly, Applicant's claim is awarded 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Relief Physical Therapy PT PC	04/22/20 - 05/07/20	\$530.93	Awarded: \$530.93
Total			\$530.93	Awarded: \$530.93

- 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.

Interest shall begin to accrue as of April 21, 2022, the date the claim was received by the American Arbitration Association, until payment is made. The interest shall be two percent per month, simple, not compounded, on a pro rata basis using a 30 day month.

C. Attorney's Fees

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

As this claim was filed after the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D) which took effect on February 4, 2015, attorney's fees shall be calculated pursuant to the amended terms, 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 NY

SS :

County of New York

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

05/29/2023  
(Dated)

Bernadette Connor

### **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:**  
0610292e5e126307cbf26391b7ae543a

### **Electronically Signed**

Your name: Bernadette Connor  
Signed on: 05/29/2023