

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

JPB Todt Hill Medical Care PC
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-23-1286-8498

Applicant's File No. JPB 271.01, 02

Insurer's Claim File No. 97708

NAIC No. 24309

ARBITRATION AWARD

I, Amanda R. Kronin, 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: LZ

1. Hearing(s) held on 10/26/2023
Declared closed by the arbitrator on 10/26/2023

Michael Lamond, Esq from Akiva Ofshtein PC participated virtually for the Applicant

Elina Amiryan, JD from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,322.88**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing in this matter, applicant amended the amount in dispute to \$1641.46 in accordance with the fee schedule.

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

3. Summary of Issues in Dispute

This arbitration arises out of medical services provided to the injured person, LZ, a 39 year old female driver, who was involved in a motor vehicle accident which occurred on 4/09/22. The issue presented is

whether medical services provided to the injured person on 11/9/22 and 11/16/22 were medically necessary in light of the Respondent's Independent Medical Examination performed by Dr. Gary Florio, MD, on 8/11/22 with an IME cutoff date of 9/06/22.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

It is well-settled that a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v. General Assurance Co., 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2d Dept., June 2, 2006; See: Insurance Law § 5106 a, Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD3d 742, 774 N.Y.S.2d 564 (2004); Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [2003 NY Slip Op 51701U (App. Term, 2d & 11th Jud. Dists.)]. See also: 11 NYCRR §65-1.1, Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co., 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006.

I find that the bill for \$1,641.46 was timely and properly submitted. At the hearing, no issues were raised as to the timeliness or content of the Denial based upon a lack of medical necessity defense. I deem that the Applicant has established a prima facie case of entitlement to reimbursement herein based upon the submissions and that the burden shifts to the Respondent to establish its defense. The issue presented is whether the services are medically necessary.

The services at issue were denied based on the independent Medical Examination performed by Dr. Gary Florio, MD, on 8/11/22 with an IME cutoff date of 9/06/22. My review of the IME report of Dr. Florio revealed normal ranges-of-motion in the cervical, thoracic and

lumbar spines as well as complaints of pain and tenderness.. The IME doctor found the injured-party's injuries resolved. However, an IME report cannot be the basis of a termination of benefits if ultimately found to be unpersuasive.

The Applicant has provided contemporary treatment notes which document Assignor's consistent pain as well a contemporaneous re-evaluation on: 11/09/22. The Assignor related consistent complaints regarding her neck, mid and lower back. Accordingly, I do not find it credible that he could present a completely negative IME as Dr. Florio represents. In addition, I note, that as the court held in Amato v. State Farm Ins. Co., 30 Misc.3d 238, 910 N.Y.S.2d 637, "an IME is a snapshot of the injured party's medical condition as of the date of the IME. The opinion of the doctor conducting an IME and issuing a report that no further treatment or testing is needed is nothing more than an expert's opinion that at the time the examination was conducted the claimant did not need any further treatment or testing."

After careful review of the records submitted by the parties on the ADR Center and consideration of the oral arguments of counsel at the hearing, I determine that the applicant's medical records demonstrate the medical necessity for the treatment at issue. By a fair preponderance of the credible evidence, I am not persuaded by Dr. Florio's IME. I find that the patient's causally related injuries were unresolved and the treatment at issue was medically necessary. Accordingly, the Respondent's denial is not sustained and the Applicant's outstanding claim in the amount of \$1,641.46 is granted in its entirety. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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
	JPB Todt Hill Medical Care PC	11/09/22 - 11/09/22	\$1,203.47	\$853.27	Awarded: \$853.27
	JPB Todt Hill Medical Care PC	11/16/22 - 11/16/22	\$1,119.41	\$788.19	Awarded: \$788.19
Total			\$2,322.88		Awarded: \$1,641.46

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/15/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment.

C. Attorney's Fees

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

Applicant is awarded attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5)

- 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 Suffolk

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

11/01/2023
(Dated)

Amanda R. Kronin

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:

f080b3701c5f4f0c25675974a3bc501e

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 11/01/2023