

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

DHD Medical, P.C.
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-23-1289-9204

Applicant's File No. n/a

Insurer's Claim File No. 94107-04

NAIC No. 24309

ARBITRATION AWARD

I, Kenneth Rybacki, 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 10/30/2023
Declared closed by the arbitrator on 10/30/2023

Dino DiRienzo, Esq. from Dino R. DiRienzo Esq. participated virtually for the Applicant

Mark Zemcik, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,652.30**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in issue was reduced to \$2,710.34 to account for claims previously paid and comport the remaining claims in issue to applicable fee schedules.

Stipulations WERE made by the parties regarding the issues to be determined.

Counsel for the parties stipulated that Respondent's denials were issued within applicable thirty-day claim-determination periods prescribed by Ins. Law Sec. 5106 and/or 11 NYCRR 65-3.8, that Applicant's claims comported with applicable fee

schedules and that the only issue to be decided was whether continuing treatment of the Assignor was medically necessary following Respondent's physical examination by its orthopedic expert, Aruna Seneviratne, M.D.

3. Summary of Issues in Dispute

Whether continuing treatment was necessary for injuries sustained in a 6/9/21 accident by D.J.R., a forty-year-old male. Applicant's claims for services provided during the period, 12/7/21 through 8/1/22 were denied by the Respondent on the recommendation of its examining orthopedic expert, Aruna Seneviratne, M.D. following an examination of the Assignor on 10/14/21.

4. Findings, Conclusions, and Basis Therefor

This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument. No submissions following the close of the record on 5/17/23 were admitted, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."

This action for the payment of health services claims for services provided during the period 12/7/21 through 8/1/22 arises from a 6/9/21 accident. Respondent denied the claims on the recommendation of its examining expert, Aruna Seneviratne, M.D. following a 10/14/21 examination of the Assignor. Respondent is precluded however from relitigating the issue of whether continuing treatment was necessary following Dr. Seneviratne's examination.

My colleague, Arbitrator Jeffrey Held, previously heard the claims of a different provider that were denied on the same basis as the claims in the instant matter. Arbitrator Held considered the opinion of Dr. Seneviratne and the provider's rebuttal evidence and held that continuing treatment was medically necessary. See, AAA Case No. 17-22-1253-7042. The doctrine of collateral estoppel therefore precludes Respondent from relitigating that issue, see, e.g., Matter of Ranni, 58 N.Y.2d 715 (1982), as collateral estoppel applies to all matters necessarily established by an earlier judgment, see, e.g., Statter v. Statter, 2 N.Y.2d 668. Respondent had a full and fair opportunity to present its case in the prior related matter, the facts raised in the prior proceeding are similar to the facts raised in the instant proceeding, and the findings of fact made by Arbitrator Held in the prior proceeding were necessary to the disposition of those claims and were not merely gratuitous findings.

Applicant is awarded \$2,710.34.

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
	DHD Medical, P.C.	12/07/21 - 12/07/21	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	12/13/21 - 12/13/21	\$127.41		Awarded: \$127.41
	DHD Medical, P.C.	12/13/21 - 12/13/21	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	01/11/22 - 01/11/22	\$151.17		Awarded: \$151.17

	DHD Medical, P.C.	01/24/22 - 01/24/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	01/25/22 - 01/25/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	02/07/22 - 02/07/22	\$127.41		Awarded: \$127.41
	DHD Medical, P.C.	02/07/22 - 02/07/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	02/10/22 - 02/10/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	02/17/22 - 02/17/22	\$151.17		Awarded: \$151.17
	DHD Medical, P.C.	03/01/22 - 03/01/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	04/25/22 - 04/25/22	\$127.41		Awarded: \$127.41
	DHD Medical, P.C.	04/26/22 - 04/26/22	\$151.17		Awarded: \$151.17
	DHD Medical, P.C.	05/03/22 - 05/03/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	05/09/22 - 05/09/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	05/10/22 - 05/10/22	\$112.97		Awarded: \$112.97

	DHD Medical, P.C.	05/23/22 - 05/23/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	05/31/22 - 05/31/22	\$112.97		Awarded: \$112.97
	DHD Medical, P.C.	06/06/22 - 06/06/22	\$127.41		Awarded: \$127.41
	DHD Medical, P.C.	06/06/22 - 06/06/22	\$151.17		Awarded: \$151.17
	DHD Medical, P.C.	06/07/22 - 06/07/22	\$112.97		Withdrawn with prejudice
	DHD Medical, P.C.	06/20/22 - 06/20/22	\$112.97		Withdrawn with prejudice
	DHD Medical, P.C.	06/21/22 - 06/21/22	\$112.97		Withdrawn with prejudice
	DHD Medical, P.C.	06/29/22 - 06/29/22	\$112.97		Withdrawn with prejudice
	DHD Medical, P.C.	07/06/22 - 07/06/22	\$112.97		Withdrawn with prejudice
	DHD Medical, P.C.	07/18/22 - 07/18/22	\$112.97		Withdrawn with prejudice
	DHD Medical, P.C.	07/20/22 - 07/20/22	\$112.97		Withdrawn with prejudice
	DHD Medical, P.C.	07/27/22 - 07/27/22	\$151.17		Withdrawn with prejudice

	DHD Medical, P.C.	08/01/22 - 08/01/22	\$127.41		Awarded: \$127.41
	DHD Medical, P.C.	08/01/22 - 08/01/22	\$112.97		Awarded: \$112.97
Total			\$3,652.30		Awarded: \$2,710.34

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/09/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Statutory interest shall run from the date of filing, 3/9/23 to the date of payment by the Respondent.

C. Attorney's Fees

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

Attorney fees are awarded at 20% of the amount of first-party benefits awarded in the aggregate, plus interest, in accordance with the limitations set forth in 11 NYCRR 65-4.6.

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

11/03/2023

(Dated)

Kenneth Rybacki

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:
c0e9d61bab78be190050428f79797d91

Electronically Signed

Your name: Kenneth Rybacki
Signed on: 11/03/2023