

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Long Island Jewish Medical Center (NSUH) (Applicant)	AAA Case No.	17-22-1244-0226
	Applicant's File No.	RFA22-306043
- and -	Insurer's Claim File No.	94962-01
Hereford Insurance Company (Respondent)	NAIC No.	24309

ARBITRATION AWARD

I, Deepak Sohi, 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: claimant

1. Hearing(s) held on 11/02/2023
Declared closed by the arbitrator on 11/02/2023

Ryan Woodworth from The Russell Friedman Law Group LLP participated virtually for the Applicant

Rademela Borukhova from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$51,284.11**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended to \$8,165.96 to comport with the New York State Workers' Compensation Board Medical Fee Schedule (WCFS).

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

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bill. The parties also stipulated that Respondent's NF-10 denial of claim form was timely issued.

3. Summary of Issues in Dispute

This arbitration arises out of an emergency room visit, hospital stay, and associated services provided to the claimant, a 32-year-old male, who was involved in a motor vehicle collision as a driver on 7/4/2021. Applicant is seeking reimbursement for the emergency room visit, hospital stay, and associated services provided to the claimant on dates of service 7/4/2021 through 7/7/2021. Respondent denied reimbursement for the emergency room visit, hospital stay, and associated services as the claimant's injuries did not arise out of the use and operation of a motor vehicle and/or the motor vehicle was not the proximate cause of the claimant's injuries.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

USE OR OPERATION OF A MOTOR VEHICLE

EMERGENCY ROOM VISIT & HOSPITAL STAY

DATES OF SERVICE 7/4/2021 - 7/7/2021

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. 11 NYCRR 65-4.5(o)(1). (Regulation 68-D.)

This arbitration stems from medical treatment provided to the claimant, a 32-year-old male, who was involved as a driver in a motor vehicle collision

on 7/4/2021. Applicant submitted a bill for an emergency room visit and associated services provided on dates of service 7/4/2021 through 7/7/2021 in the amount of \$51,284.11. At the hearing, Applicant amended the amount claimed to \$8,165.96 to comport with the New York State Workers' Compensation Board Medical Fee Schedule (WCFS).

Respondent denied Applicant's claim stating in its denial, "The above listed applicant is not an Eligible Injured Person as the applicant's injuries did not arise out of the use and operation of the motor vehicle and/or the motor vehicle was not the proximate cause of the applicant's injuries. Therefore all No-Fault benefits for the above applicant are denied." Respondent asserts the instant claim should be denied because the injuries sustained by the EIP did not arise out of the "use and operation" of a motor vehicle.

The Respondent contends the Applicant has failed to establish a prima facie case. A prima facie case of entitlement to No-Fault compensation includes evidence "that the injuries for which payment was sought arose from an automobile accident covered under the subject policy." Westchester County Medical Center v. N.Y. Central Mutual Life Ins. Co., 262 A.D.2d 553, 555, 692 N.Y.S.2d 665, 667 (2d Dept. 1999). A review of case law and other authority have established a requirement of some minimal indicia of evidence that the injuries were causally related to a motor vehicle accident.

At the hearing, counsel for Respondent argued that the hospital records establish that the claimant was not an eligible injured person (EIP) under the policy because his injuries did not arise out of the use and operation of the insured vehicle and that the services in dispute were for a condition unrelated to the accident.

Under Insurance Law § 5102, New York's Comprehensive Motor Vehicle Insurance Reparation Act, no-fault first party benefits are reimbursable to an injured party or his or her assignee for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle. The Mandatory Personal Injury Protection Endorsement set forth at 11 NYCRR § 65-1.1 defines an EIP as:

(a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;

(b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle;

(c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle;

or

(d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle."

Counsel for Applicant argued that the medical records indicate the services were for a traumatic injury and that the patient's injuries were superimposed, and that Respondent's proofs are insufficient to substantiate the denial in the absence of a report from a medical expert interpreting them.

Causation is presumed since "it would not be reasonable to insist that (an applicant) must prove as a threshold matter that (a) patient's condition was 'caused' by the automobile accident." Mount Sinai Hospital v. Triboro Coach, 263 A.D.2d 11, 20, 699 N.Y.S.2d 77 (2nd Dept. 1999). Thus, the burden is on the insurer to come forward with proof establishing by "fact or founded belief" its defense that the claimed injuries have no nexus to the accident. Mount Sinai Hospital v. Triboro Coach, 263 A.D.2d 11, 19 (2nd Dept. 199) (quoting Central Gen. Hosp. v. Chubb Group of Ins. Cos., 90 N.Y. 2d 195, 199 (1997)).

The Appellate Division, ruled that the question of whether a condition is unrelated to a motor vehicle accident cannot be resolved without opinion evidence by a medical expert qualified to render an opinion on causality. Kingsbrook Jewish Medical Center v. Allstate Ins. Co., 61 A.D.3d 13, 22, 871 N.Y.S.2d 680, 687 (2d Dept. 2009). However in that decision, the court also held, "*We acknowledge that there are rare but recognized instances*

where medical issues can be resolved by a trier of fact without resort to expert opinion."

According to the medical records submitted by the Applicant from the claimant's emergency room visit and hospital stay:

1. "Pt (patient) c/o (complains of) back pain, leg pain, dizziness s/p (status post) MVA (motor vehicle accident), Pt states he took pain meds (unk name) and tramadol then got in the car and blacked out while driving and the car hit a light pole."
2. "Pt states he felt dizzy and diaphoretic (perspiring profusely) and passed out before crashing."
3. "HPI (History of Present Illness) Objective Statement: 32yo man PMH (Past Medical History) *herniated disc with chronic left back and leg pain* presents after MVC (motor vehicle collision), Pt states that he started to have pain in his leg and became diaphoretic, lightheaded, and had an episode of LOC (loss of consciousness). He was restrained and woke up afterwards with airbags deployed, no shattering of windshield, *and was able to self-extricate and ambulate afterwards. He denies any new pain.* Pt denies headache, change in vision, focal weakness or paresthesia/numbness in extremities, or n/v (nausea or vomiting). No incontinence or tongue biting. *He denies any focal joint pain other than the lower back and leg pain that he has chronically.* He was taking tramadol, meloxicam, and another medication ? (presitin) for back pain prior to driving. No neck pain. No chest pain or SOB (shortness of breath). No abdominal pain."
4. "32yo man presents after MVC after an episode of LOC prior to collision with associated left leg pain and diaphoresis in setting of taking medications for pain prior to driving Hx (history) not concerning for seizure activity and no neurologic deficits on exam to suggest intra-cranial abnormalities. No concerning changes on EKG for syncope but will keep on cardiac monitor and obtain trop (troponin test) to assess, Syncope likely 2/2 vasovagal response to pain vs pain medication."
5. Attestations Statements: Attending Statement: Attending with.

I have personally seen and examined this patient. I have fully participated in the care of this patient. I have made amendments to the documentation where appropriate and otherwise agree with the history, physical exam, and plan as documented by the Resident.

Attending Contribution to Care: 32M p/w (used to describe a patient's initial symptoms or chief complaint) loss of consciousness while driving, preceded by sweating and dizziness. Pt reports the airbags went off and he was wearing his seatbelt. Afterwards he was ambulatory on scene. Pt does report he took tramadol then went to sleep and then went driving and another medicine called "presentan" (unable to identify this medicine) 10 prior to driving. *Pt took the pain med for his low back pain, which he's seeing a doctor and a chiropractor for.* Here mild low back pain, malaise. Normal motor strength x 4. Mild L ACW ttp no deformity. Mild ?hives to abd - pt denies allergies or pruritis. Possibly vasovagal from pain vs medications he's taking. Advised not to drive after taking tramadol specifically due to concern for sedation. No B/B (bowel/bladder) incontinence or tongue biting concerning for seizure. *No head strike or HA (headaches) or abnormal neuro exam. Plan check labs given syncope (fainting or passing out), EKG, CXR, rx pain meds, reass.*

Found to have isolated low plt. (platelets) Dr Fermin d/w hematology, req additional blood tests. Blue top plt sent to eval plt count in case of clumping on initial CBC. Hemolysis labs sent. Blue top plt decreasing from initial. No evidence of bleeding. Concern for ITP - CDU full although would be a good candidate - *admit for heme eval.*

6. History of Present Illness:

32 y/o Male with *PMHx (Past Medical History) of Lumbar Herniated Disc w/ chronic left back and left leg pain* presents to LIJ after Motor Vehicle collision to light pole. Pt states that he was driving to the temple when he became diaphoretic, started feeling numbness on left leg and lightheadedness for few seconds and after that he experienced episode of LOC. Pt does not recall what happened but has dash cam video of him driving and colliding into a light pole. Pt states that when he woke up, he noticed his air bags deployed *he was able to get out of the car and walk without any additional pain other than his*

chronic back pain. Denied experiencing any chest pain, palpitations, seizure like symptoms, or urinary/fecal incontinence/retention. Pt said he is a Uber/Cab Driver and states that night before he had right amount of sleep and while he works he stops every 3-4 hours to take a break from driving. Pt lives home with family and states that he never experienced Syncope before. Pt denies headaches, visual changes, seizures, urinary or bowel incontinence, tongue biting chest pain, SOB, DOE (Dyspnea On Exertion-this means symptoms of shortness of breath that occur when you exert yourself), PND (Paroxysmal Nocturnal Dyspnea is a sensation of shortness of breath that awakens the patient, often after 1 or 2 hours of sleep, and is usually relieved in the upright position), orthopnea, palpitations, diaphoresis, increased lower extremity edema, fever chills, malaise, myalgias, anorexia, generalized fatigue abdominal pain, N/V/C/D BRBPR, melena, urinary symptoms, cough, and wheezing. Pt reports no new medications at home, pt takes Prednisone, Meloxicam, and tramadol.

On arrival to the ED, his vitals were T 98.1, P 72, BP 126/61, RR 16, O2 sat 98% RA. His lab work showed thrombocytopenia (a condition that occurs when the platelet count in your blood is too low) (pt denies any prior low platelets) and negative troponin x1. His CXR and CTH were negative for any acute findings. He was given lidocaine patch x 1, tylenol 975mg PO x 1, and NS 1L. He was admitted to medicine on telemetry.

7. 32 y/o Male with PMHx of Herniated Disc w/ chronic left back and left leg pain presents to LIJ after Motor Vehicle collision to light pole. *Pt is being admitted for Syncope work up and incidental finding of Thrombocytopenia.*

8. Patient seen and examined on 7/5/21 case discussed with PA Gela Gelashvili. *This is a 32M with history of Lumbar disc herniation with associated L sided leg pain/sciatica who presents to the hospital after a syncopal episode while driving.* Said that he was driving to his temple when he had sudden onset of diaphoresis lightheadedness followed by LOC. Woke up to find that he had crashed into a light pole with air bags deployed and *was subsequently brought to LIJ MC where work up showed him to have new thrombocytopenia but*

otherwise negative work up so far. Currently denies any acute complaints, said that his lumbar spine pain is at baseline, no other complaints at present.

- Would c/w syncope work up as above, check TTE, repeat trop in AM, telemetry monitoring
- Might benefit from loop recorder vs holter monitor for arrhythmia assessment. consider cards eval in AM
- New thrombocytopenia without any acute bleeding, heme eval in AM
- Other management as above.

I find that this is one of those rare instances contemplated by the Court in Kingsbrook, supra. While Respondent fails to submit an affidavit from an expert in support of its defense, based on a reading of the hospital records, it is clear that this injury was unrelated to the subject automobile collision. A plain reading of the emergency room/hospital records noted above establish the claimant had a past medical history of lumbar herniated disc with chronic left back and left leg pain for which he was being treated by a doctor and chiropractor for and took, in this instance, pain meds including Tramadol (opiate [narcotic] analgesics) prior to driving for. As a result, the claimant felt dizzy, began sweating profusely, and passed out/blacked out just prior to crashing into a light pole. As a result of the subject motor vehicle collision the claimant had no new pain other than the pain he had chronically. He denied any acute complaints. He was admitted to the hospital (Applicant) for Syncope work up and incidental finding of Thrombocytopenia.

The Applicant's own doctors and other medical professionals have determined that the claimant's alleged injuries are not related to the motor vehicle collision. I am convinced that the syncope episode and subsequent finding of Thrombocytopenia was the basis for the subject hospital admission and services provided and was not caused or exacerbated by any injuries the claimant may have sustained in the 7/4/2021 motor vehicle collision.

The New York No-Fault Mandatory Personal Injury Protection Endorsement ("PIP" or "no-fault" endorsement) provides that the insurance carrier will pay benefits for loss to an eligible injured person "on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or motorcycle." See, 11 NYCRR65-1 or Regulation 68-A. New York Courts have interpreted the phrase "arising out of the use or operation of a motor vehicle" to mean that the vehicle produced the injury or that the injury arose out of the inherent nature of the vehicle itself. See, Eagle Ins. Co. v Butts, 269 A.D.2d 558, 558-559 (2d Dept. 2000). Where a person's injuries were produced by an instrumentality other than the vehicle itself, no-fault first party benefits are not available. The vehicle must be the proximate cause of the injury before the absolute liability imposed by the [Comprehensive Motor Vehicle Insurance Reparations Act] arises. No-fault benefits are available only when the motor vehicle is the instrumentality that causes the injuries for which reimbursement is sought See, William Walton v. Lumbermans Mutual Casualty Company, 88 N.Y.2d 211, 666 N.E.2d 1046, 644 N.Y.S.2d 133 (1996).

After careful review of the records contained within the ECF and in consideration of the oral argument of counsel, I find Respondent's position persuasive. I find the hospital records sufficient to substantiate Respondent's defense that the claimant's injuries did not arise out of the use and operation of a motor vehicle and/or the motor vehicle was not the proximate cause of the claimant's injuries.

An assignee stands in the shoes of an assignor and thus acquires no greater rights than those of its assignor. NY & Presbyterian Hospital v. Country-Wide Ins. Co., 17 NY3d 586 (2011); East Acupuncture, P.C. v. Allstate Ins. Co., 61 AD3d 202 (2d Dept 2009). Applicant proffered no credible evidence refuting Respondent's showing that the patient is not an EIP, let alone any evidence that the injuries or services at issue were causally related to the use or operation of a motor vehicle.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of the Respondent. Consequently, the Applicant's claim for the emergency room visit, hospital stay, and associated services provided to the claimant on dates of service 7/4/2021 through 7/7/2021 is hereby denied with prejudice.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

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

11/05/2023
(Dated)

Deepak Sohi

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:
25e6d08a825b0d80c83b45443546bdae

Electronically Signed

Your name: Deepak Sohi
Signed on: 11/05/2023