

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Summer Physical Therapy PC  
(Applicant)

- and -

Liberty Mutual Insurance Company  
(Respondent)

AAA Case No. 17-22-1280-5738

Applicant's File No. N/A

Insurer's Claim File No. SLT585285

NAIC No. 36447

**ARBITRATION AWARD**

I, Debbie Kotin Insdorf, 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 06/20/2023, 11/07/2023  
Declared closed by the arbitrator on 11/07/2023

Usman Nawaz from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Virginia Scala from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$465.36**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The billed amount is in accordance with the fee schedule.

3. Summary of Issues in Dispute

The Applicant is seeking reimbursement for physical therapy treatments and PPE following a motor vehicle accident on 8/18/22 involving Assignor EJ. The Respondent issued timely denials based on there being no coverage for this injured party. Respondent is asserting that it is not the proper carrier.

#### 4. Findings, Conclusions, and Basis Therefor

The Applicant's claim is for \$465.36 for physical therapy treatments (9/23/22 though 9/29/22 and 10/06/22 through 10/11/22) and PPE (9/23/22).

The Respondent issued timely denials stating, "Pursuant to Regulation 68, 65-1.1 Exclusions, this coverage does not apply to any NY state resident other than the named insured or relative injured through the use of insured motor vehicle, if such person is the owner of a Motor vehicle insured under another policy. Claim should be submitted to the household carried as primary."

A motor vehicle accident occurred on 8/18/22 in the State of Connecticut. The vehicle involved in this accident in this accident was a 2018 Mercedes Benz registered to RP, who was insured by the Respondent. RP- resides at 686 Academy Street 21 New York, NY 10034. The police report noted the driver of RP's vehicle was the Assignor EJ. He resides at 2 Thayer Street Apt 4c New York, NY 10040. The police report has RP as being the passenger of the vehicle.

Under Insurance Law §5101 et. seq., 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 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.

Exclusions- This coverage does not apply to personal injury sustained by: (j) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act'

Respondent maintains that it is not the correct carrier for PIP coverage for this Assignor.

The Respondent relies on an ISO report which provides a claim number and policy number for the Personal Automobile with Farmers Insurance Company. It notes the location of the loss as being in Connecticut on 8/18/22. The insurance Company is Farmers Property and Casualty with policy number 618262973. The "Insureds" are MC, RB and ZB all of whom have addresses in Wolcott Connecticut. The Assignor EJ is only

noted as "Claimant Driver". There is no indication that the Assignor is the owner or a relative of the owner of the vehicle insured by Farmers.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I find Respondent's denial cannot be upheld. The Respondent has failed to prove that it is the incorrect carrier for PIP coverage for this Assignor.

Accordingly, the Applicant is awarded \$465.36.

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
	Summer Physical Therapy PC	09/23/22 - 09/29/22	\$240.18	Awarded: \$240.18
	Summer Physical Therapy PC	10/06/22 - 10/11/22	\$225.18	Awarded: \$225.18
Total			\$465.36	Awarded: \$465.36

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/28/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after Apr.5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or from the payment of benefits, interest shall not accumulate on the disputed claim or element until such action is taken. 11 NYCRR 65-3.9(c). In accordance with 11 NYCRR 65-3.9 (c), interest shall be paid on the claim (s), totaling \$465.36 from 12-28-22, the date the arbitration was commenced.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). The insurer shall pay the applicant an attorney's fee, in accordance with 65-4.6(d). This amendment takes into account that there is an attorney fee of 20% of benefits plus interest with no minimum fee and a maximum attorney fee of \$1360.00.

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

11/08/2023  
(Dated)

Debbie Kotin Insdorf

### **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:**  
d8c3545e9a2cdffc0e04297d00342b8f

### **Electronically Signed**

Your name: Debbie Kotin Insdorf  
Signed on: 11/08/2023