

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Prime Physical Therapy of Long
Island
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No.	17-23-1287-2451
Applicant's File No.	STLG22-61863
Insurer's Claim File No.	0639425685
NAIC No.	19232

ARBITRATION AWARD

I, Tracy Morgan, 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: injured person-assignor

1. Hearing(s) held on 10/25/2023
Declared closed by the arbitrator on 10/25/2023

Colleen Terry, Esq. from Strauss Terry Law Group, PLLC participated virtually for the Applicant

Michael Rago, Esq. from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$306.26**, 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

The Applicant is the assignee of no-fault benefits from injured person-assignor (SP), a 48 year old female who reported she was involved in a motor vehicle accident on August 31, 2021 as a passenger. Following the accident, the injured person-assignor sought medical assistance and underwent physical therapy services rendered by Applicant August 9, 2022-August 24, 2022. Respondent denied Applicant's claim contending a lack of medical necessity based upon an Independent Medical Examination performed by Joseph Stubel, M.D. on February 9, 2022.

The issue presented on this arbitration is whether the services in dispute were medically necessary?

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in ADR Center. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed the relevant exhibits contained in the electronic file maintained by the American Arbitration Association and have considered all of the stipulations and arguments presented by both parties at the hearing of this matter. No witnesses appeared or testified.

I find that Applicant established its prima facie entitlement to first person no-fault benefits as proof of claim was mailed to and received by the insurer and payment of No-Fault benefits is overdue *See Insurance Law § 5106 [a]; 11 NYCRR 65.15 [g]; Viviane Etienne Medical Care, P.C. v Country-Wide Ins. Co.*, 25 NY3d 498 (2015).

Respondent timely denied Applicant's claim contending that the services at issue were not medically necessary based upon the results of the Independent Medical Examination (hereafter referred to as "IME") of Dr. Joseph Stubel, M.D. performed on February 9, 2022.

Where a health care provider establishes its prima facie entitlement to no-fault benefits, the burden shifts to the insurer to prove that the medical services were not medically necessary *Nir v Allstate Ins. Co.*, 7 Misc. 3d 544 (2005); *Amaze Medical Supply Inc. v Eagle Insurance Co.*, 2 Misc3d 128(A), 2003 NY Slip Op. 51701(U)(App Term 2d, 11th & 13th Dists.). Respondent bears the burden of production in support of its lack of medical necessity defense, which if established, shifts the burden of persuasion to applicant *See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op 52116 (App Term 1st Dept. 2006).

Respondent relies upon the IME report of Dr. Stubel dated February 9, 2022 to support its denial of claim. Dr. Stubel noted that the injured person-assignor presented to the IME with current complaints of neck and low back pain. Examination of the cervical and thoracolumbar regions of her spine revealed no tenderness, no spasms and full normal ranges of motion. Muscle strength, reflexes and sensation were normal throughout and orthopedic tests including cervical distraction, cervical compression, Valsalva maneuver, straight leg raises, Hoover's test, Fabere's test and Bragard's tests were negative. Bilateral shoulder assessment yielded normal ranges of motion and negative Neer's, Yergason's, drop arm and Apprehension tests. The remainder of the

examination was negative. The diagnostic impression was of resolved cervical sprain/strain and resolved thoracolumbar sprain/strain. Dr. Stubel concluded that no further treatment was necessary.

I find that Dr. Stubel's report establishes a lack of medical necessity for the services herein. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. *See, Bronx Expert, supra.*

Respondent argued that the issue of medical necessity for services rendered by this same Applicant to the same injured person-assignor and denied based upon Dr. Stubel's IME was already decided in a prior arbitration award in Respondent's favor and as such, Applicant is precluded from re-litigating this issue.

The doctrine of collateral estoppel mandates that a party may not reassert an issue that has been determined in a prior arbitration, whether or not the tribunals or causes of action are the same *See Ryan v New York Telephone*, 42 NY2d 494, 478 NYS2d 823, 467 NE2d 487 (1984). Further, the Court of Appeals has held that issues resolved by earlier arbitration are subject to the doctrine of collateral estoppel *Rembrandt Industries, Inc. v. Hodges International, Inc.*, 38 NY2d 502, 381 NYS2d 451 (1976).

Linked to this matter is an arbitration matter with an award by the undersigned *Advanced Prime PT of Long Island v Allstate Insurance Company* AAA Case Number 17-22-1275-8852. Applicant was a party in this linked matter and had the opportunity to fully litigate the issue. In this linked matter, it was determined that Dr. Stubel's IME presented a medical rationale and factual basis to support its defense of lack of medical necessity and that Applicant failed to rebut Dr. Stubel's conclusions. Specifically that:

"There were no comprehensive contemporaneous evaluations submitted upon this Record that rebut Dr. Stubel's findings and opinion. Applicant submitted the rebuttal by Carlos Gatdula, PT dated July 18, 2023 who solely relied upon documentation from the physical therapy notes wherein the injured person-assignor complained of pain in her right shoulder. No objective findings were included in the daily notes. There are no complete evaluations contemporaneous with the IME or expert opinion that sufficiently rebuts the findings of the thorough and complete examination or the conclusions of Dr. Stubel. Applicant's proof fails to sufficiently demonstrate the injured person-assignor's condition in detail contemporaneous with the IME or show that the post-IME services were medically necessary. Pan Chiropractic P.C. v Mercury Ins. Co., 24 Misc3d 136A (App Term 2d, 11th & 13th Jud Dists 2009). See also Flushing Traditional Acupuncture, P.C. a/a/o AK v GEICO Ins. Co, 36 Misc3d 156A, (App Term 2d Dept 2012); Eastern Star Acupuncture, P.C. v Mercury Ins. Co., 26 Misc3d 142[A], 907 NYS2d 436, (App Term 2d, 11th & 13th Jud Dists 2010)...The preponderance of the

credible evidence supports a finding in favor of the Respondent. Applicant's claim for No-Fault benefits is denied..."

"The two elements that must be satisfied to invoke the doctrine of [collateral] estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue" *Kaufman v Lilly Co.*, 65 NY2d 449, 455 (1985). "The burden is on the party attempting to defeat the application of collateral estoppel to establish the absence of a full and fair opportunity to litigate" *D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 664 (1990).

Here, medical services rendered by the same Applicant for the same injured person-assignor are in dispute which were denied based upon the same IME of Dr. Stubel. I find that this Applicant had a full and fair opportunity to contest the issue in the prior arbitration. The doctrine of collateral estoppel is applicable and the prior determination is binding against Applicant. Applicant's claim for No-Fault benefits is denied.

Based on the foregoing, Applicant's claim is denied. 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, Tracy Morgan, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

11/13/2023
(Dated)

Tracy Morgan

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:
29e33725deb2f536c35e7d7000470119

Electronically Signed

Your name: Tracy Morgan
Signed on: 11/13/2023