

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NYC Family Health NP, P.C.  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No. 17-23-1283-0647  
Applicant's File No. ZJ161689917  
Insurer's Claim File No. 875570280000001  
NAIC No. 35882

### ARBITRATION AWARD

I, Maryann Mirabelli, 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 11/14/2023  
Declared closed by the arbitrator on 11/14/2023

Marc Fenelon, Esq., from Law Offices of Zara Javakov, Esq. P.C. participated virtually for the Applicant

Brittany Deprimo, Esq., from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,211.99**, 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 arbitration arises out of a motor vehicle accident which took place on 9/18/22 whereby the Assignor (SM) a then 30-year-old male was allegedly injured in the accident and sought treatment with the provider. Applicant is seeking reimbursement in the amount of \$1211.99 for radiology testing performed 10/21/22 in addition to PPE supplies for that day, and ligament laxity testing performed on 11/7/22 and 11/9/22, along with interest and counsel fees, under the No-Fault Regulations in connection with injuries sustained in the motor vehicle accident.

The threshold issue presented at the hearing is whether the subject loss is a covered event and whether the Assignor is an eligible injured person. Respondent also raised a fee schedule issue regarding the amounts billed for the claims.

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

The hearing proceeded by ZOOM.

This decision is based upon the written submissions of counsel for the respective parties as well as oral argument. Witnesses were not present to testify at the hearing. I have reviewed the documents contained in the Record as of the date of the hearing.

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a prima facie case with the respect to the services that are the subject of this arbitration. See, Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004) Once Applicant has made out a prima facie case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 NY3d 312 (2007). Respondent's timely NF -10 denial of claim form states,

*"Based upon our investigation into this claim, the subject loss is not a covered event as it resulted from an intentional act and not an "accident". The claimant is not an "eligible injured person". Additionally, misrepresentations have been made in the presentation of this claim. Accordingly, your claim is denied in its entirety."*

Respondent advises that this arbitrator has sustained this defense in a linked award, whereby the Assignor in the linked case was another passenger in this vehicle and where this Arbitrator discussed the inconsistencies of the testimony obtained by the Assignor in this Arbitration. See AAA Award no., 17-23-1290-9582. In that award I reviewed the same evidence as that presented here and noted as follows,

*"In support of its defense, Respondent has submitted an affidavit of Paul Koenig, Special Investigations Unit ("SIU") investigator, who states there are a number of discrepancies and inconsistencies between the Claimant's reports and a suspicious set for circumstances surrounding the accident which prompted an investigation in to the accident. The affiant states in his affidavit that there was inconsistent testimony between the insured occupants with respect to the loss, the medical facilities treated at, questions about the loss being reported, a lack of photographic evidence forming the damages, questions regarding the identity of the alleged adverse vehicle owner, involvement of an adverse driver, and questions regarding the adverse driver.*

*A careful review of the affidavit sets for the following inconsistencies which stood out to this Arbitrator:*

- On 9/23/22, Respondent received a call from a law firm advising of the accident. Respondent auto generated a letter to the claimant driver (LM). (LM) then called the insurance company the same day upon receipt of the letter advising he had no knowledge of the accident. The following day on 9/24/22, (LM) called back with a full description of the loss.
- There were a number of discrepancies regarding the loss and the law firm which allegedly represented (LM).
- (LM) uploaded an insurance card for the alleged adverse vehicle and there were a number of issues surrounding the alleged insurer and the location of the vehicle and address of the insured.
- The adverse vehicle involved in the accident had an extensive claims history involving similar facts to the loss, similar treatments, facilities and suspect circumstances.
- The adverse vehicle also had a subsequent loss less than a month later with the same set of suspicious circumstances.
- The affiant advised a plate reader located the adverse vehicle at the locations where the claimants treated on numerous occasions.
- The claimants involved in the accident (JJ), (SM), and the Assignor (OF) all underwent examinations under oath where the testimony elicited by the three had a number of inconsistencies regarding the accident and treatment.
- The claimants all treated at the same facilities however the testimony elicited reflected that the circumstances as to how they all ended up at the same facility were inconsistent.

An insurer can premise its defense that a collision was not an accident without being required to prove that it was the product of fraud, which would require proof of all of the elements of fraud, including scienter; as such, the defense requires proof by a preponderance of the evidence, not by clear and convincing evidence. V.S. Medical Services, P.C. v. Allstate Ins. Co., 25 Misc.3d 39, 889 N.Y.S.2d 360 (App. Term 2d, 11th & 13th Dists. 2009), aff'g, 11 Misc.3d 334, 811 N.Y.S.2d 886 (Civ. Ct. Kings Co. 2006).

Additionally, an insurer raises an issue of fact in support of its defense of a staged accident by submitting an analysis of inconsistencies between the EUO statements of the driver and the passengers and the EUO transcripts themselves certified by the transcriber, although unsworn and unsigned. Manhattan Medical Imaging, P.C. v. State Farm Mutual Automobile Ins. Co., 20 Misc.3d 1144(A), 873 N.Y.S.2d 235 (Table), 2008 N.Y. Slip Op. 51844(U), 2008 WL 4200317 (Civ. Ct. Kings Co., Katherine A. Levine, J., Sept. 4, 2008)."

Here, as I did in the linked award, I find based upon the detailed analysis set forth by the SIU investigator and the additional supplemental evidence provided to support the assertions raised by the investigator, that the Respondent has by a preponderance of the evidence supported its defense. Mr. Koenig's analysis includes a detailed breakdown of the conflicting and inconsistent testimony elicited by 4 of the claimants (See affidavit paragraphs 25 through 36) Additionally, as the affiant sets forth, this is further exacerbated by the finding that there is an extensive claims history for multiple occupants involved in this loss with familiar facts to this one.

Applicant did not submit any evidence which would clarify any of the inconsistencies set forth nor was any evidence submitted which would disrupt my prior findings. As such, I find Respondent has sustained its defense.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered...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. Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Orthopedic Rehabilitation a/a/o "I.B." v. Country-Wide Insurance Co., AAA Case No. 17-R-991-14272-3, stated, in relevant part, that "*the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at [his/her] decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents*".

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

11/15/2023

(Dated)

Maryann Mirabelli

#### **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:**  
759428f66aa2d1e35e503ca36a1ae62f

**Electronically Signed**

Your name: Maryann Mirabelli  
Signed on: 11/15/2023