

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Orthopedics & Joint Preservation
PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No.	17-23-1288-0941
Applicant's File No.	SS-240732
Insurer's Claim File No.	32-33K3-36C
NAIC No.	25178

ARBITRATION AWARD

I, Camille Nieves, 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: Eligible Injured Person (BR)

1. Hearing(s) held on 11/13/2023
Declared closed by the arbitrator on 11/13/2023

Gregory Itingen from Samandarov & Associates, P.C. participated virtually for the Applicant

Jason Egielski from James F. Butler & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$452.10**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute to \$387.16 based on reduction to 80% for the 11/29/22 exam performed by a PA.

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

The parties stipulated to the amended amount in dispute.

3. Summary of Issues in Dispute

Applicant seeks reimbursement for treatment from 11/29/22 to 12/7/22 following a motor vehicle accident on 4/29/22. The charges were timely denied based on an IME by Dr. Kiernan on 8/30/22, effective 10/5/22.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for treatment from 11/29/22 to 12/7/22 following a motor vehicle accident on 4/29/22. The charges were timely denied based on an IME by Dr. Kiernan on 8/30/22, effective 10/5/22.

In case 17-23-1286-2696, I reviewed the same IME regarding another provider which performed ultrasounds on 10/18/22 and found the IME sufficient to establish resolved injuries and that further treatment was unnecessary I specifically noted:

"...the EIP was a 68 year old restrained male driver who went on his own to an ER the next day and was treated and released. He began a course of conservative treatment and was not planning to undergo any surgery. He made complaints of pain in the knees, left elbow, right shoulder and lumbar spine. Reports of ultrasounds of the knees, shoulders, left elbow and lumbar spine are submitted. Gait and posture were normal and no braces or devices were used. The examination of the spine was entirely normal. There was no spasm or tenderness and ranges of motion were normal. Orthopedic and neurologic testing was negative. The exam of the joints (shoulders, knees, wrists, elbows) was also entirely normal. There was no crepitus, heat, effusion, swelling or erythema. There was no tenderness and ranges of motion, orthopedic testing and neurologic testing was normal/negative. Sprains and strains of the spine, shoulders, right wrist, hand and knees were deemed resolved and there was no further need for treatment. The patient was deemed stable and could return to all activities. The IME is detailed and comprehensive and adequately establishes resolved sprains and strains and that further treatment was unnecessary shifting the burden to applicant."

The records submitted failed to rebut the IME or establish unresolved injuries.

The prior award is not determinative of the issue here which is whether the treatment leading up to knee surgery performed in January was necessary.

While the IME is sufficient, the applicant here submits evidence showing that the EIP underwent meniscectomies, debridement of the ACL, abrasion chondroplasty of the patella, coblation arthroplasty, removal of loose bodies, major synovectomy and arthrocentesis on 1/5/23.

On 11/29/22, an orthopedic exam noted sudden onset of bilateral knee pain at the time of the accident. He underwent a conservative course of treatment with persistent restrictions and complaints in the left knee. On exam there was tenderness, decreased

range of motion and positive McMurray's and patellar apprehension. Motor strength was 4/5 and there was mild effusion. He was taking Naproxen. Left knee internal derangement and post traumatic OA was diagnosed and injections and therapy was recommended.

On 12/7/22 the complaints and findings persisted and surgery was recommended. MRI findings correlated with the exam.

None of these records were submitted in the prior case and it was specifically noted that there were no comprehensive exams close in time to the IME there unlike here where there are orthopedic exams which indicate positive objective findings in the operative knee on two visits and a positive MRI with a recommendation for surgery.

I find the evidence sufficient to rebut the IME and there is no peer review. The records establish unresolved knee pathology which required additional treatment and finally surgery.

The charges are due and owing.

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
	Advanced Orthopedics & Joint Preservation PC	11/29/22 - 11/29/22	\$324.69		Awarded: \$259.75
	Advanced Orthopedics & Joint Preservation PC	12/07/22 - 12/07/22	\$127.41		Awarded: \$127.41
Total			\$452.10		Awarded: \$387.16

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/24/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from the date of filing at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

Pursuant to 11 NYCRR 65-4.6, 20% of the amount of first party benefits, plus interest thereon, subject to a maximum 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 FL
SS :
County of Osceola

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

11/21/2023
(Dated)

Camille Nieves

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:
cc6a12f3a21e47de8b2e590505f42228

Electronically Signed

Your name: Camille Nieves
Signed on: 11/21/2023