

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RJ Physical Therapist PC  
(Applicant)

- and -

Liberty Mutual Insurance Company  
(Respondent)

AAA Case No. 17-23-1298-6218

Applicant's File No. RJP050523005

Insurer's Claim File No. 051052260

NAIC No. 36447

**ARBITRATION AWARD**

I, Giovanna Tuttolomondo, 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 11/20/2023  
Declared closed by the arbitrator on 11/20/2023

Theodore Economou, Esq. from Economou & Economou PC participated virtually for the Applicant

Jonathan Humphreys, Esq. from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$709.31**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in controversy to \$ 141.82 to reflect an amount which Applicant believes to be correct and to further acknowledge partial payments.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The Assignor, SM, now a 44-year-old female, was involved in a motor vehicle accident on September 6, 2022. Thereafter, the Assignor sought medical attention for the injuries

sustained in the accident. At issue in this case are claims totaling \$ 141.82, representing physical therapy performed on the Assignor between February 13, 2023 and February 27, 2023. Respondent raises a defense based on a Preferred Provider Organization ["PPO"] Agreement. The issue presented is whether Respondent validates this defense.

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

The decision in this case is based upon the oral arguments of the parties' representatives at the video/Zoom hearing and upon my review of the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association. I have reviewed the documents in MODRIA as of the date of closing of this file and incorporate, and rely upon, said documents in making my decision.

Having reviewed the Record in MODRIA, I do not find that Respondent meets its burden of production. The Record is devoid of documentation/a contract binding the herein Applicant to the PPO Agreement. Respondent submits an Agreement signed by Julian A. Gomez. It is unclear what Mr. Gomez's relationship is to the Applicant. At the hearing, Applicant's counsel advised that Mr. Gomez is not affiliated with Applicant. In addition, the NF-3 identifies the owner of Applicant as Ricardo Santiago. Given these circumstances, Respondent cannot establish a binding PPO agreement on Applicant. In turn, I award the balance of the claims.

#### 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
	RJ Physical Therapist PC	02/13/23 - 02/13/23	\$101.33	\$20.26	Awarded: \$20.26
	RJ Physical Therapist PC	02/15/23 - 02/15/23	\$101.33	\$20.26	Awarded: \$20.26
	RJ Physical Therapist PC	02/17/23 - 02/17/23	\$101.33	\$20.26	Awarded: \$20.26
	RJ Physical Therapist PC	02/20/23 - 02/20/23	\$101.33	\$20.26	Awarded: \$20.26
	RJ Physical Therapist PC	02/22/23 - 02/22/23	\$101.33	\$20.26	Awarded: \$20.26
	RJ Physical Therapist PC	02/24/23 - 02/24/23	\$101.33	\$20.26	Awarded: \$20.26
	RJ Physical Therapist PC	02/27/23 - 02/27/23	\$101.33	\$20.26	Awarded: \$20.26
Total			\$709.31		Awarded: \$141.82

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/08/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See, generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217, 906 N.E.2d 1046 (2009).

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). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d)." This amendment takes into account that the maximum attorney fee has been raised from \$850.00 to \$1,360.00.

- 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 Queens

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

11/22/2023

(Dated)

Giovanna Tuttolomondo

**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:**  
36937f16c45153edc78eaea3a22c7f5e

### **Electronically Signed**

Your name: Giovanna Tuttolomondo  
Signed on: 11/22/2023