

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RES Physical Medicine & Rehab Services
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1297-9147

Applicant's File No. 23-45339

Insurer's Claim File No. 18-5712261

NAIC No. 11851

ARBITRATION AWARD

I, Gillian Brown, 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: EIP.

1. Hearing(s) held on 12/12/2023
Declared closed by the arbitrator on 12/12/2023

Nicole Jones, Esq., from The Morris Law Firm, P.C. participated virtually for the Applicant

Liz Peabody, from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$204.90**, 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 EIP was involved in a motor vehicle accident on 3/4/18. On 1/23/23 and 3/20/23, he received services from the claimant. Reimbursement has been denied based on an independent medical examination performed by Dr. Igor Rubinshteyn, MD, on 6/27/19. I have previously written as to the sufficiency of the IME in a linked matter involving the same parties.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. 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. This hearing was conducted using documents contained in the ADR Center. Any documents contained in the ADR Center folder for this matter are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR Center maintained by the American Arbitration Association.

In AAA # 17-22-1259-8715 (8/11/23), I wrote in pertinent part as follows:

On 3/4/18, the EIP - a 50-year-old man - was involved in a motor vehicle accident. He was the restrained passenger of an automobile, which was struck head-on. The EIP sustained reported injuries to the neck, mid back, lower back, left knee, left leg, left hand, ribs, and sternum. He also sustained various lacerations. He did not lose consciousness, and the vehicles airbags deployed. He was taken by ambulance to a hospital, where numerous X-rays were performed. He sustained numerous rib fractures. He was treated with medication, given a neck collar, and admitted to the hospital for three days.

He then began a course of chiropractic care and other conservative care. On 6/27/19, he was examined at the direction of the respondent by Dr. Igor Rubinshteyn, MD.

At the time of the examination, the EIP reported that he had stopped chiropractic, and was no longer receiving treatment. He stated that he felt better as compared with how he felt after the accident, and he told Dr. Rubinshteyn that he felt pain in his mid and low back, bilateral knees, ribs and sternum. He reported no other complaints. He stated that on a pain scale from 1 to 10 (10 being the worst) his pain at that time was a 4.

On physical examination, Dr. Rubinshteyn noted no antalgic gait or difficulty walking. The examination of his spine was normal, with most ranges of motion either normal or exceeding normal (there were some slightly reduced ranges). Dr. Rubinshteyn administered no positive orthopedic tests. Similarly, he administered normal negative examinations of all bilateral upper and lower extremities. He deferred examination of the ribs/sternum to the appropriate specialty. He reviewed numerous records going back to the date of the accident. He diagnosed the EIP as follows:

Cervical spine sprain, resolved; Thoracic spine sprain, resolved; Lumbar spine sprain, resolved; Right knee sprain, resolved; Left knee/leg sprain/foot sprain, resolved; and Objectively unremarkable examination of bilateral upper extremities, as it pertains to the accident of record.

He went on to note that although the EIP did not initially report a subsequent accident, upon examination, he observed a left clavicle surgical scar. The EIP then reported having a motorcycle accident in December which caused a right index finger fracture and left clavicle fracture requiring surgery.

Dr. Rubinshteyn concluded as follows:

The claimant's subjective complaints were not correlated by objective findings during today's physical examination. No ongoing physical therapy or orthopedic treatment would be reasonable or medically necessary for the accident of record. It is my opinion that further office visits, massage therapy, injections, prescription medication, diagnostic testing, household help, or durable medical equipment is not medically necessary. Surgery is not indicated.

The EIP received physical therapy on the various dates at issue herein. Of note is that the last of the dates is nearly three years after the Rubinshteyn IME. Reimbursement has been denied based on the Rubinshteyn IME.

[...]

The Rubinshteyn examination is sufficient to support the denials at issue in these matters. He provides a factual basis and a medical rationale for his conclusions, and a review of the medical records supports his conclusions. The EIP has not provided a specific rebuttal, and there are no contemporaneous records which serve to provide a meaningful rebuttal to the Rubinshteyn report.

I then went on to deny the claim in that matter.

The instant matter involves the same services, and parties, as the above matter. I find that the principle of collateral estoppel applies to this matter, and that I am constrained to adopt my own previous finding with regard to Dr. Rubinshteyn's examination. Moreover, I have reviewed the parties' submissions, and I have read nothing which would cause me to arrive at a different conclusion in this matter.

The claim is denied.

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 Erie

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

12/13/2023
(Dated)

Gillian Brown

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:
9f0bdaac462584c308754c4a5050b5dd

Electronically Signed

Your name: Gillian Brown
Signed on: 12/13/2023