

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Headlam Medical Professional Corporation (Applicant)	AAA Case No.	17-23-1281-1259
- and -	Applicant's File No.	SBG-11675-2471258
	Insurer's Claim File No.	19-4566909
Progressive Casualty Insurance Company (Respondent)	NAIC No.	32786

ARBITRATION AWARD

I, Neal S Dobshinsky, 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: J Doe

1. Hearing(s) held on 11/22/2023
Declared closed by the arbitrator on 11/22/2023

Steven Neuwirth from Sanders Grossman Aronova PLLC participated virtually for the Applicant

Allison Silverstein from Law Offices of Perry & Frankson participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$448.66**, 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

Applicant, a physician, performed muscle testing and range of motion measurement on J Doe. Applicant sought payment for the evaluations from respondent Progressive.

Progressive denied the claim on the ground that "[J Doe] was not an occupant of our insured vehicle and, therefore, is not an eligible injured person under our policy."

Is Doe eligible for no-fault insurance benefits from Progressive?

4. Findings, Conclusions, and Basis Therefor

I have read and considered the materials in the AAA's ADR Center case file. I have heard and considered the arguments of counsel. I find as follows:

Background

On 9/26/19, J Doe, then 37 years old, was the driver of a motor vehicle (Vehicle 1) that was in a two-vehicle accident. According to the New York City Police Accident Report, J Doe was driving a 2019 BMW with New York license plates. The registered owner of the vehicle was M Doe, whose address was the same as J Doe's. The insurance code for Vehicle 1 is 100, Geico Indemnity Company.

The other vehicle (Vehicle 2), a 2015 Nissan with New York license plates, was driven and owned by RRH. The insurance code for Vehicle 2 is 626: Progressive Specialty Insurance Company, respondent Insurer in this arbitration.

J Doe claimed he was injured in the accident. He sought care and treatment.

On 10/7/19, J Doe saw Bo Headlam, MD, a physician with and owner of applicant Headlam Medical. Headlam performed muscle testing and range of motion measurement on J Doe.

Applicant's Claim and Progressive's Denial

Applicant, as J Doe's assignee, timely submitted a claim for \$448.66 to Progressive for no-fault benefits for payment for the evaluations. In the Verification of Treatment by Attending Physician (form NF-3) that Application submitted to Progressive, Applicant references Progressive policy number xxxxx2179.

Progressive timely denied the claim on the ground that "[J Doe] was not an occupant of our insured vehicle and, therefore, is not an eligible injured person under our policy."

The only issue argued and submitted for determination is whether J Doe is eligible for no-fault insurance benefits from Progressive. All other issues were waived.

Applicant's Prima Facie Case and the Presumption of Coverage

An applicant for no-fault benefits establishes its prima facie case by submitting evidentiary proof that the prescribed statutory billing forms had been mailed to and received by the insurer, and that payment of the benefits is overdue. Insurance Law §5106[a]; *Mary Immaculate Hosp. v Allstate Ins. Co.*, 5 AD3d 742, 743 [2d Dept 2004], *Viviane Etienne Med. Care v Country-Wide Ins. Co.*, 25 NY3d 498, 501 [2015].

Furthermore, an applicant's submission of a no-fault claim carries with it a "presumption of [coverage] which attaches to the claim form." *A.B. Med. Servs., PLLC v State Farm Mut. Auto. Ins. Co.*, 7 Misc3d 822, 825 [Civ Ct Kings County 2005]. What that means is that the respondent "bears the burden of coming forward with admissible evidence . . . that there is no coverage." "But the burden of coming forward with evidence is not the burden of persuasion." "The burden of persuasion stays with the [applicant], and if [respondent] carries its burden of coming forward, [applicant] must rebut or succumb" (internal citations omitted). *State Farm* at 825.

Here Applicant established its prima facie case. Coverage is presumed.

The Consequences to Applicant if Doe is Not Entitled to No-Fault Benefits from Progressive

In the no-fault context, medical providers derive their interests entirely from the Assignment of Benefits executed by the assignor (the injured person). A provider/applicant for payment is the assignee of the assignor. As such, the provider "stands in the shoes" of the injured person and acquires no greater rights than the injured person has. *Long Island Radiology v. Allstate Ins. Co.*, 36 AD3d 763, 765 [2d Dept 2007]. If Doe is not entitled to no-fault benefits from Progressive, Applicant's claim must be denied.

Insurer's Lack of Coverage Defense

Doe Is Not an Eligible Injured Person Under the Progressive Policy

In addition to the Police Accident Report, Progressive submits a copy of the declarations pages for the insurance policy that Applicant references in its claim, Progressive policy number xxxxx2179. The drivers under that policy include RRH, the driver of Vehicle 2, but J Doe is not mentioned.

Progressive also submits an Insurance Services Office claim search for the accident. The search report shows that Vehicle 1 was insured by Geico. The report included the Geico policy number and claim number.

Progressive notes that there are linked arbitration where the injured person is J Doe, and the respondent insurer is Geico.

Insurance law § 5103 (a) provides that "Every owner's policy of liability insurance issued on a motor vehicle in satisfaction of the requirements of article six or eight of the vehicle and traffic law shall also provide for . . . the payment of first party benefits to: (1) Persons, *other than occupants of another motor vehicle* . . ." (emphasis added). This is implemented by the Regulations which in relevant part define an "eligible injured person" as "(d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York *while not occupying another motor vehicle*" (emphasis added). 11 NYCRR 65-1.1 (d) Mandatory personal injury protection endorsement.

It is undisputed that J Doe was driving Vehicle 1. Based on the law and the regulations, it appears that J Doe would be an eligible injured person, entitled to no-fault benefits, under Vehicle 1's insurance with Geico, but J Doe is not entitled to benefits under Vehicle 2's policy with Progressive. No-fault insurance benefits are provided by the vehicle the person is occupying, not by any other vehicle that happened to be involved in the accident. Put another way, a person not an occupant of the vehicle Progressive insured at the time of the accident (here Vehicle 2), is not an "eligible injured person" under Vehicle 2's policy with Progressive. *RX Warehouse Pharm. Inc. v Erie Ins. Exch.*, 63 Misc3d 1236(A) (NY City Civ Ct), 2019 NY Slip Op 50905(U).

The evidence is sufficient to overcome the presumption of coverage. Applicant has no countervailing evidence.

Conclusion

Insurer overcame the presumption of insurance coverage. Applicant did not overcome that showing.

Based on the parties' submissions, their arguments, the law, the regulations, and the weight of the credible evidence, I conclude that there is no no-fault insurance coverage under the Progressive policy. The claim against Progressive is denied, but without prejudice to any claim that Applicant may have against another insurer.

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 NJ
SS :
County of Monmouth

I, Neal S Dobshinsky, 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)

Neal S Dobshinsky

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:
daaace111ce5b6feb8147db2cdd1b588

Electronically Signed

Your name: Neal S Dobshinsky
Signed on: 12/13/2023