

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RES Physical Medicine & Rehab Services
(Applicant)

- and -

Allstate Property and Casualty Insurance
Company
(Respondent)

AAA Case No. 17-23-1293-9466

Applicant's File No. 23-44441

Insurer's Claim File No. 0595925629
2MG

NAIC No. 17230

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

Meghan McDonough, Esq., from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$388.22**, 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 8/10/20. On 1/9/23 and 2/9/23, the EIP received services from the claimant. Reimbursement for the services has been denied based on an independent medical examination performed by Dr. Igor Rubinshteyn, MD, on 8/12/21. I have previously issued an award regarding the sufficiency of the Rubinshteyn IME.

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 # 17-22-1235-8852 (10/8/22), I wrote as follows:

On 8/10/20, the EIP - a 71-year-old man - was involved in a motor vehicle accident. He was the restrained driver of a vehicle which was struck on the front passenger side. He did not lose consciousness, and the airbags did not deploy. The accident occurred at low speed. He was seen on the day of the accident at a hospital emergency department. He was evaluated, treated and discharged. He began a course of conservative care, and X-rays and MRI studies were performed. He began treating with the claimant. He underwent cervical and lumbar ligament laxity testing. He had referrals to various specialists. He received cortisone injections and prescription medications.

On 8/12/21, he was examined at the direction of respondent by Dr. Igor Rubinshteyn, MD. This was at least the third examination of the EIP by Dr. Rubinshteyn, previous ones having been conducted on 2/25/21 and 4/23/21. The EIP stated that he was still undergoing physical therapy twice per week, and he told Dr. Rubinshteyn that his treatments provided him with sixteen hours of relief. However, Dr. Rubinshteyn did not elaborate as to which treatment provided him with that relief. He stated that he was still taking hydrocodone, Lyrica and a muscle relaxer. He was complaining of pain in his neck, back, right bilateral shoulders, bilateral knees, and right elbow. The EIP stated that his pain was "aching, stabbing, and pulling." He was experiencing numbness and tingling. At the time of the examination, the doctor described him as being "morbidly obese," (being 6'2" and 330 pounds) and noted that he was using a lumbar support, a left knee brace, and a walking stick.

Dr. Rubinshteyn examined the EIP's cervical, lumbar and thoracic spine, bilateral shoulders, bilateral elbows, and bilateral wrists/hands, hips and knees. He noted some slightly reduced ranges of motion, and administered no positive orthopedic tests. Dr. Rubinshteyn diagnosed the EIP with resolved sprains in his cervical, lumbar and thoracic spine, bilateral shoulders, elbows, wrists, hips and knees. He stated that any reductions in ranges of motion were due to the EIP's "limited effort." He concluded that the EIP required no further orthopedic treatment, medication, or physical therapy.

[...]

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 prior IME shows a clear lack of benefit of any of the treatment that the EIP is receiving. Although claimant argues that the medical records of the claimant's treatment of the EIP serve as a rebuttal, I note that even the claimant characterized the EIP's condition as being "essentially unchanged," at a visit several weeks after the IME.

A review of the record makes it clear that the EIP is still suffering various symptoms, but the treatment he is receiving is obviously providing no benefit.

The claims are denied.

Pursuant to the doctrine of collateral estoppel, I find that I am constrained to adopt my own prior ruling as to the sufficiency of the Rubinshteyn IME. Moreover, I have reviewed the submissions of the parties herein. I have read nothing which would cause me to arrive at a different conclusion than the one I reached in the earlier matters.

Accordingly, 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:
74f38de200efc76919874d2490c331b9

Electronically Signed

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