

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

HFP Chiropractic, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1294-8752
Applicant's File No.	FDNY23-64483
Insurer's Claim File No.	0600130780000003
NAIC No.	22055

ARBITRATION AWARD

I, Darren Sheehan, 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: Claimant

1. Hearing(s) held on 11/27/2023
Declared closed by the arbitrator on 11/27/2023

Todd Fass from Fass & D'Agostino, P.C. participated virtually for the Applicant

Maria Greeman from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$512.29**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amount in dispute.

3. Summary of Issues in Dispute

Applicant submitted bills totaling \$512.29 for dates of service 1/12/2023-2/23/2023. The bills relate to chiropractic treatment rendered to the claimant, a 39-year-old male, involved in a motor vehicle accident on 1/9/2023.

This denial is made based on Section IV of the policy under General Conditions-FRAUD AND MISREPRESENTATION Coverage is not provided to any person who knowingly conceals or misrepresents any material fact or circumstance relating to this insurance: (1) at the time of application (b) at any time during the policy period; or (c) in connection with the presentation or settlement of a claim. In addition, based upon our investigation into this claim, the subject loss is not a covered event as it resulted from an intentional act and not an "accident". The claimant is not an "eligible injured person". Additionally, misrepresentations have been made in the presentation of this claim.

4. Findings, Conclusions, and Basis Therefor

By counsel for respondent, it is alleged that the operator of the insured's vehicle intentionally swerved into an adjacent lane of traffic, slamming on its brakes, thereby deliberately causing a rear-end accident.

It was stipulated and herein redacted that "MCS" was the operator of said vehicle with both "LP" and "MP" as passengers.

There is no MV-104 or Police Accident Report submitted as evidence.

MCS, again the operator, appeared for an examination under oath ("EUO") on 3/22/2023. She testified that the accident occurred on the Van Wyck Parkway (p.17). She had been traveling on the parkway in the middle lane for approximately 8-10 minutes (p.18) when she was rear-ended by another motor vehicle (p.18). At the time of impact, her vehicle was still moving (p. 18) at a speed of about 35-45 m.p.h. (p.19). The traffic conditions were described as "moderate" at the time (p.19). The vehicle which struck hers, she described as a "big truck" (p.19). The police did arrive at the scene (p.22), as well as the fire department (p.23).

Two months prior to this, the respondent-carrier recorded a conversation with MSC which was transcribed and included as evidence. The date of this conversion was 1/9/2023. Then, she also stated that her vehicle was impacted from the rear.

I can say there was not much to the questions or answers during this recorded conversation. The EUO was more thorough.

LC appeared for an EUO on 4/18/2023. Her testimony was similar. She too stated the accident occurred on the Van Wyck (p.15). She too acknowledged that MC had been travelling in the middle lane (p.15) which was also the lane where her vehicle was impacted (p.15). She too confirmed that her vehicle did not change over into the middle lane, but instead had been there for some time before the accident occurred (p.16). And, just as MC testified, she also maintained that the vehicle was not stopped, but rather moving when struck from the rear. She added that at the time of impact the traffic conditions were "normal" (pp.16-17).

MP appeared for an EUO on 3/22/2023. Like the others, he testified to the vehicle traveling in the middle lane of the Van Wyck for some time (p.14) when it was struck from the rear while still moving.

Opposite to the testimony of these three, the respondent-carrier presented a recorded transcript it took from a conversation on 1/30/23 with the adverse vehicle's operator. That operator, **WP**, stated he was traveling in the middle lane on the Van Wyck when MCS's vehicle entered onto the Van Wyck from the farthest right lane and "then decided for whatever reason, pulled into the middle lane and stopped dead, just stopped short, just stopped completely." With that said, he did recognize that traffic was "moving really". With a bit of a leading question, the interviewer asked, "So, she was in the right lane for a few minutes and then moved over in front of you?" For which WP, answered, "Exactly".

Respondent also relied on a BOSCH "Crash Data Retrieval" software was accessible in MSCs vehicle.

By affidavit from Paul Koenig, an employee of respondent's special investigation unit or "SIU," he arrived at the conclusion that MCS's vehicle "quickly went into the middle lane" in front of WP's truck and "came to a stop in front of him for no apparent reason." Even acknowledging that "despite testimony from three occupants of the insured's vehicle indicating that they had been going [at] a consistent speed at the time of the

impact, without any slowing, data retrieved from an electronic data recorder imaging contradicted same in that it showed a significant reduction in speed from 35 to 21 mph at the time of impact".

So what?

This data showed that 5 seconds prior to the impact the vehicle was moving at a rate of speed of 35 mph and stayed at that speed until 1.5 seconds before impact when it was reduced to 21 m.ph.

I would hardly call slowing down from 35 mph to 21 mph a sudden stop. Not to mention, this crazy conspiracy theory that the insured had somehow orchestrated an intentional rear-end collision is a horrible mischaracterization of the evidence. Mr. Koenig completely ignored, as he all but admitted, the testimony of three individuals in favor of the adverse operator's statement and a data readout of the decrease in speed of MCS's vehicle.

At worse, perhaps the testimony provided during the EUOs was off a bit on the accuracy, but by no means is there any evidence of fraud or misrepresentation. As such, I find in favor of applicant.

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	Status
	HFP Chiropractic, PC	01/12/23 - 02/23/23	\$512.29	Awarded: \$512.29
Total			\$512.29	Awarded: \$512.29

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/12/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from the filing date of this case, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

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).

- 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 Suffolk

I, Darren Sheehan, 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)

Darren Sheehan

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:
c5c76c634086b1534baa05a5e5141dbc

Electronically Signed

Your name: Darren Sheehan
Signed on: 12/13/2023