

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sky Radiology, PC.
(Applicant)

- and -

AMGuard Insurance Company
(Respondent)

AAA Case No.	17-23-1296-7445
Applicant's File No.	FDNY23-64514
Insurer's Claim File No.	GDAMG21100008
NAIC No.	Self-Insured

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

Donna Phoenix from North American Risk Services Inc. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,970.90**, 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 a bill in the amount of \$1,970.90 for date of service 11/12/2021. The bill relates to MRIs taken of the cervical spine and lumbar spine of the claimant, a 53-year-old male, involved in a motor vehicle accident on 9/21/2021. The bill was denied payment by respondent on the following basis:

The above listed [claimant] is not an Eligible Injured Person as the [claimant's] injuries did not arise out of the use or operation of the insured motor vehicle under this policy and or the motor vehicle insured under this policy was not the proximate cause of the [claimant's] injuries. There is no mention of the injured party on the police report associated with this loss and we are unable to confirm that they were involved in this loss.

4. Findings, Conclusions, and Basis Therefor

This issue has been previously determined in favor of applicant by this same arbitrator, see 17-22-1274-5637.

Just as it was in this prior matter, there is no evidence to support respondent's basis of denial.

Under the doctrine of collateral estoppel, a party is precluded from relitigating an issue which has been previously decided against it in a prior proceeding where it had a full and fair opportunity to litigate the issue. *D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 N.Y. 2d 659 [1990]. The two elements that must be satisfied to invoke the doctrine of estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue. *Kaufman v. Lilly Co.* 65 N.Y. 2d 449, 455 (1985).

Therefore, when new evidence is introduced (e.g., an updated affidavit), that evidence should be precluded. *Country-Wide Ins. Co. v. Epione Medical P.C.*, 2020 N.Y. Slip op. 32945 (U) (Sup. Ct. New York Co., Eileen A. Rakower, J. Sept. 8, 2020).

The doctrine of res judicata and collateral estoppel are designed to put an end to a matter once it is duly decided (*see, Siegel*, NY Practice §442, at 747 [4th ed]). Res judicata or claim preclusion, is invoked when a party, or those in privity with the party, seek to relitigate a disposition on the merits of claims or causes of action arising out of the same transaction or series of transactions which were raised or could have been raised in the prior litigation (*see, Schuylkill Fuel Corp. v. Nieberg Realty Corp.*, 250 NY 304, 306-307 [1929]).

In fact, it would be irrational for an arbitrator not to give res judicata effect to a court order or judgment on the very same claim. *New York City Transit Authority v. GEICO*, 46 Misc 3d 706 (Civ. Ct. New York Co. 2014).

Here, both elements of collateral estoppel have been met: (1) The identical issue was decided in the prior action and is decisive in the present action, and (2) The party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue.

Thus, I again deny applicant's claim.

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
	Sky Radiology, PC.	11/12/21 - 11/12/21	\$1,970.90	Awarded: \$1,970.90
Total			\$1,970.90	Awarded: \$1,970.90

B. The insurer shall also compute and pay the applicant interest set forth below. 07/07/2023 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:
57f0387794ad5f28d598877fb15f0936

Electronically Signed

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