

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Orthopedics & Joint Preservation
PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No.	17-23-1296-2555
Applicant's File No.	SS-244357
Insurer's Claim File No.	32-29W7-32N
NAIC No.	25178

ARBITRATION AWARD

I, Emily Bennett, 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: AD

1. Hearing(s) held on 12/21/2023
Declared closed by the arbitrator on 12/21/2023

Joseph Padrucco, Esq. from Samandarov & Associates, P.C. participated virtually for the Applicant

Shelly Heffez, Esq. from Abrams, Cohen & Associates, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$87.80**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended its claim to \$70.24 to reflect fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The Assignor, AD, a 48 year old female, was involved in a motor vehicle accident on 1/24/22. At issue in this case is \$70.24 for office evaluation performed on 9/21/22. The parties agreed at the hearing the sole issue to arbitrate is whether Respondent can sustain its medical necessity defense.

Respondent denied the claim based upon the independent medical examination ("IME") by Dr. Ferriter, M.D., dated 6/10/22 effective 7/13/22.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center. This decision is based upon the submissions of the parties and the arguments made by the parties at the hearing. Any case law or evidence not submitted in the record will not be considered. Any documents submitted after the closure of the hearing will not be permitted into the record. No applications were made at the hearing.

Regarding Respondent's IME defense, Respondent relied on the orthopedic IME by Dr. Ferriter. A review of the same revealed a symptomatic left shoulder examination with a remaining normal examination. Dr. Ferriter diagnosed AD with a resolved sprain and strain of the left hip, bilateral knee, cervical spine, thoracic spine, and lumbar spine and healing post-surgical status of the left shoulder. Dr. Ferriter advised there was further orthopedic care warranted for the left shoulder. Dr. Ferriter recommended physical therapy for six weeks at a rate of 2x a week with orthopedic follow up.

Regarding AD's remaining diagnosed body parts, Dr. Ferriter cut off prescription medication, injection, massage therapy, diagnostic tests, household help, durable medical equipment, and special transportation. Dr. Ferriter did not comment or cut off office evaluations.

Based on the aforesaid review, I find Respondent failed to meet its burden of persuasion. Dr. Ferriter failed to deny or comment on the instant service, even though Respondent's defense appeared to indicate otherwise. Lastly, I find Respondent's evidence failed to present any medical analysis or support to cut off the instant office evaluation. See *Nir v. Allstate*, 7 Misc.3d 544 (Civ. Ct. Kings Cty. 2005).

Based on Respondent's lack of support for denying the office visit, Applicant's claim is awarded in its entirety.

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	Amount Amended	Status
	Advanced Orthopedics & Joint Preservation PC	09/21/22 - 09/21/22	\$87.80	\$70.24	Awarded: \$70.24
Total			\$87.80		Awarded: \$70.24

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/21/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be calculated at a simple rate of two percent per month calculated on a pro rata basis using a 30-day month.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay the applicant an attorney's fee equal to 20% of that total sum, subject to a maximum of \$1,360.00. See 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 NJ

SS :

County of Gloucester

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

12/22/2023

(Dated)

Emily Bennett

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:
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Electronically Signed

Your name: Emily Bennett
Signed on: 12/22/2023