

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Garden Medical Care, PC
(Applicant)

- and -

Country-Wide Insurance Company
(Respondent)

AAA Case No. 17-23-1311-5541

Applicant's File No. GMC-0136

Insurer's Claim File No. 000360173-002

NAIC No. 10839

ARBITRATION AWARD

I, Victor Moritz, 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: IP

1. Hearing(s) held on 12/14/2023
Declared closed by the arbitrator on 12/14/2023

Gil Schapira, Esq. from The Law Office of Gill S. Schapira, P.C participated virtually for the Applicant

Cody Robar, Esq. from Jaffe & Velazquez, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,203.44**, 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 applicant seeks reimbursement for the cost of an office evaluation and extracorporeal shock wave therapy (ESWT) treatments provided to the IP (R.P.G. 66 year old male) on November 22, 2022, relative to a June 19, 2022 motor vehicle accident. The respondent attempted to deny this claim based on a defense of lack of medical necessity per the results of an Independent Medical Evaluation (IME) performed by Dr. Joseph Margulies on September 22, 2022. The applicant objected to the IME, noting that it was uploaded the day before this hearing on December 13, 2023. The respondent did not allege any fee schedule defenses. This matter is determined after

reviewing the submissions and presentations of both sides. I have reviewed the documents contained in the electronic case folder as of the closing of the file. The hearing was held on Zoom.

4. Findings, Conclusions, and Basis Therefor

I find for the applicant and I award the sum of \$1,203.44 for the cost of the services at issue.

I note that an arbitrator need not adhere with strict conformity to the evidentiary rules set forth in CPLR 2016 see Auto One Ins. Co., v Hillside Chiropractic P.C. 126 A.D. 3d. 423 (1st Dep't, 2015) citing 11 NYCRR 65-4.5 (o) the arbitrator shall be the judge of the relevance and materiality of the evidence offered. 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. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations Bd. of Education, et. al. v. Bellmore-Merrick 39 N.Y. 2d. 167 (1976).

Rocket Docket

11 NYCRR-65-4 (b) (3) as adopted in the first Amendment to Regulation 68D, governs all matters filed after March 1, 2002. Accordingly, the written record shall be closed during the case conciliation process, upon the respondent's submission or the expiration of the period for receipt of respondent's submission. Documents submitted by either party after the record is closed shall be marked "LATE." Any additional written submissions may be made only at the request or with the approval of the arbitrator. Also, on January 12, 2004, the Superintendent of Insurance issued the following: Subparagraph (ii) of Section 65-4.5(o)(3) is amended to read as follows:

(ii) For arbitrations filed on or after March 1, 2002, the arbitrator shall determine if the parties provided and exchanged documents in accordance with the requirements of paragraph (3) of subdivision (b) of section] 65-4.2 of this Part.

New York's no-fault automobile insurance system is designed "to ensure prompt compensation for losses incurred by accident victims without regard to fault or negligence, to reduce the burden on the courts and to provide substantial premium savings to New York motorists" See Matter of Medical Socy. of State of N.Y. v Serio, 100 NY2d 854, 860 (2003).

The record reflects that the respondent was advised by the American Arbitration Association (AAA) on August 23, 2023, that all papers related to this action must be submitted by September 22, 2023 and documents received after that date would be marked "late submission" and may not be considered by the arbitrator.

Notwithstanding this fact, the respondent acknowledged the IME that was utilized to deny this claim was not uploaded until December 13, 2023, the day before this hearing.

It is absolutely in the arbitrator's discretion what evidence is accepted or precluded as per the Regs. 11 NYCRR 65-4.2(b)(3)(iv).

An Arbitrator's choice not to allow late submissions has been upheld by the courts. (see Matter of Mercury Cas. Co. v Healthmakers Med. Group, P.C., 67 A.D.3d 1017 (2d Dept. 2009) and Matter of Global Liberty Ins. Co. v Coastal Anesthesia Servs., LLC, 2016 NY Slip Op 08964 (1st Dept. 2016).

I have stated on prior occasions, absent extraordinary circumstances, that I will not accept late documents that were to be submitted as part of a party's initial prima facie submissions due under "rocket docket." As the respondent has offered no viable excuse as to why the IME was uploaded the day before the hearing, I find there are no extraordinary circumstances to allow the respondent's late submission and the IME is precluded.

It is well settled that an applicant established its prima facie entitlement to payment by proving it submitted a claim set forth the facts and the amount of the loss sustained and that payment of no-fault benefits were overdue (see Insurance Law § 5106[a]; Viviane Etienne Med. Care v Country-Wide Ins. Co., 25 NY3d 498, 501 (2015); Countrywide Ins. Co. v. 563 Grand Medical PC 50 A.D. 3d. 313 (1st Dep't, 2008); Sunshine Imaging Assoc./WNY MRI v. Geico. Ins. Co., 66 A.D. 3d. 1419 (4th Dep't, 2009). A facially valid claim is presented when it sets forth the name of the patient; date of accident; date of the services; description of services rendered and the charges for those services. See Vinings Spinal Diagnostic PC v. Liberty Mutual Insurance Company, 186 Misc. 2d 287 (1st Dist. Ct. Nass. Co.1996).

In this instance, the respondent's timely submission includes a copy of the denial establishing the bill was received. I also acknowledge the applicant has submitted proof of mailing. Therefore, the applicant has met their burden.

Accordingly, the applicant is awarded the sum of \$1,203.44.

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 |
|--------------|--------------------------------|----------------------------|-------------------|----------------------------|
| | Garden Medical Care, PC | 11/22/22 - 11/22/22 | \$1,203.44 | Awarded: \$1,203.44 |
| Total | | | \$1,203.44 | Awarded: \$1,203.44 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/11/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay interest at a rate of two percent per month, simple on a pro rata basis using a thirty day month. With respect to the claim herein, interest will run from August 11, 2023, the date of the filing of this claim through payment of the claim.

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 promulgated 11 NYCRR 65-4.6(d).

With respect to this claim, the applicant is entitled to attorney's fees for the medical services provided to the IP for which the applicant is awarded the sum of \$1203.44.

- 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 Westchester

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

12/27/2023

(Dated)

Victor Moritz

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:

3a8a023279432d7aeee7f2ebd6bdb459

Electronically Signed

Your name: Victor Moritz
Signed on: 12/27/2023