

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Orthomed Health, P.C.
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1295-9138

Applicant's File No. 2974827

Insurer's Claim File No. 0644198938
2NU

NAIC No. 19232

ARBITRATION AWARD

I, Anthony Kobets, 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: Assignor

1. Hearing(s) held on 12/20/2023
Declared closed by the arbitrator on 12/20/2023

Tiffany Bogosian, Esq. from Israel Purdy, LLP participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$1,135.16**, 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

In dispute are the Applicants' bills totaling \$1135.16 for a medical evaluation and physical therapy treatments performed on the Patient (HM) from 12/29/22 - 2/16/23 as a result of injuries sustained in a motor vehicle accident on October 1, 2021.

Respondent denied a portion of the claims based upon the results of an Independent Medical Examination (IME) conducted by Dr. Joseph Stubel on 8/13/22 with an effective cutoff date of 9/3/22. Was the Applicant entitled to no-fault benefits?

4. Findings, Conclusions, and Basis Therefor

At the hearing, the parties' representatives agreed that medical necessity was the sole issue in dispute herein.

The EIP (HM) was a 44-year old male driver who was involved in a motor vehicle accident on October 1, 2021. Thereafter from 12/29/22 - 2/16/23, the patient underwent a medical evaluation and physical therapy treatments performed by the Applicant. Applicant seeks no-fault reimbursement for these services.

Respondent timely denied reimbursement of the bills in dispute herein based on the Independent Medical Examination (IME) conducted by Joseph Stubel, M.D. on 8/13/22. The patient presented to the IME with complaints of right shoulder and right knee pain. He also reported associated numbness in his left leg. Examinations of the cervical spine, thoracolumbar spine, shoulders, knees, elbows, wrists, hips and ankles were unremarkable with full ranges of motion, no spasms or tenderness and negative orthopedic tests. The diagnosis was resolved sprains and strains and Dr. Stubel concluded that further orthopedic treatment would not be necessary.

"Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity (see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed])." West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U) at 2, 2006 WL 2829826 (App. Term 2d & 11th Dists. Sept. 29, 2006); A. Khodadadi Radiology PC v. NY Central Mutual Fire Ins. Co., 2007 NY Slip Op 51342(U). Applicant's counsel argued that the IME report failed to meet its burden regarding the lack of medical necessity for the disputed services.

Applicant's counsel also argued that collateral estoppel applies to the facts herein. The Doctrine of Collateral Estoppel precludes a party from re-litigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party, whether or not the tribunals or causes of action are the same. Ryan v. New York Telephone, 62 N.Y.2d 494, 478 N.Y.2d 823. Two requirements must be met before collateral estoppel can be invoked: There must be an identity of issues which has been decided in the prior action and is decisive in the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling. (See Gilberg v. Barbieri, 441 N.Y.S.2d 49.) Further, the Court of Appeals has held that the Doctrine of Collateral Estoppel "is applicable to issues resolved by earlier arbitration." Rembrandt Industries v. Hodges International, 38 N.Y.2d 592, 381 N.Y.S.2d 383."

A review of the evidence indicates that there is an identity of issues, which have been decided in the prior action, AAA case no. 172312882622. In the prior action, the Respondent failed to prove a lack of medical necessity based on the Stubel IME. Relative to that prior action, there has been a full and fair opportunity to contest those decisions, and those decisions now stands firm. Furthermore, the decision was affirmed on appeal. As such, that decision is decisive in the present matter.

The evidence demonstrated that medical evaluations performed on 6/28/22, 7/26/22 and 9/23/22 documented the patient's complaints, objective findings and the treatments rendered.

Based upon a review of the evidence herein and the arguments of counsel, I find that the Respondent has not met its burden of providing a sufficient medical rationale or factual basis to justify a lack of medical necessity for the services in dispute herein. Dr. Stubel did not adequately explain the patient's ongoing symptomology and objective positive test results documented in the medical records. I am persuaded by the patient's medical records that the treatment was reasonable based on the patient's continued symptomology and medically necessary in order to provide pain relief and treat a persistent unresolved condition.

In addition, I find that Dr. Stubel's IME report was unpersuasive and overly conclusory without the necessary factual basis to support the denial of the claims. "[A]n IME is a snapshot of the injured party's medical condition as of the date of the IME. The opinion of the doctor conducting an IME and issuing a report that no further treatment or testing is needed is nothing more than an expert's opinion that at the time the examination was conducted the claimant did not need any further treatment or testing." Amato v. State Farm Ins. Co., 30 Misc.3d 238, 910 N.Y.S.2d 637 (2010).

I am also not persuaded that the patient's medical condition was resolved based on the positive findings noted in the medical records. To the extent medical reports can be read as expressing an opinion regarding the patient's need for additional treatment, in the absence of objection that opinion may be weighed, along with the other evidence, in determining whether plaintiff met its burden of establishing the medical necessity of the post-IME treatments. All-In-One Medical Care, P.C. v. Government Employees Ins. Co., 43 Misc.3d 726, 982 N.Y.S.2d 853 (Dist. Ct. Nassau Co. 2014). **Thus, comparing the relevant evidence presented by both parties, I find in favor of the Applicant and award \$1135.16 for dates of service 12/29/22 - 2/16/23.** This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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
	Orthomed Health, P.C.	12/29/22 - 01/05/23	\$274.24	Awarded: \$274.24
	Orthomed Health, P.C.	01/09/23 - 01/19/23	\$312.44	Awarded: \$312.44
	Orthomed Health, P.C.	01/23/23 - 01/31/23	\$274.24	Awarded: \$274.24
	Orthomed Health, P.C.	02/09/23 - 02/16/23	\$274.24	Awarded: \$274.24
Total			\$1,135.16	Awarded: \$1,135.16

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/19/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is timely denied, interest shall begin to accrue as of the date arbitration is commenced by the claimant, i.e., the date the claim is received by the American Arbitration Association, unless arbitration is commenced within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See generally, 11 NYCRR 65-3.9. Where a motor vehicle accident occurs after Apr. 5, 2002, interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New

York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009). Where no denial has been issued and no payment has been made, it is clear from the statute that the claim is overdue and interest runs from the thirty first day after the claim was presented to the carrier for payment. New York Presbyterian Hospital v. Allstate Insurance Company, 30 A.D.3d 492, 819 N.Y.S.2d 268, 2006 N.Y. Slip Op. 04815 (2nd Dep't 2006). Hempstead General Hospital v. Insurance Company of North America, 208 A.D.2d 501, 617 N.Y.S.2d 478 (2'd Dep't 1994).

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 Nassau

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

12/29/2023
(Dated)

Anthony Kobets

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:

a42e8994f3b4736a0882d8342956beb6

Electronically Signed

Your name: Anthony Kobets
Signed on: 12/29/2023