

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tri-Borough NY Medical Practice PC  
(Applicant)

- and -

Maya Assurance Company  
(Respondent)

AAA Case No. 17-23-1327-3586

Applicant's File No. N/A

Insurer's Claim File No. 2-232032-N01

NAIC No. 36030

**ARBITRATION AWARD**

I, Laura E. Villeck, 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 07/09/2024  
Declared closed by the arbitrator on 07/09/2024

Robin Grumet, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)  
participated virtually for the Applicant

Christine Lee, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$9,610.25**, was AMENDED and permitted by the arbitrator at the oral hearing.

The Applicant amended the claim to \$6,575.63 in accordance with its interpretation of the fee schedule.

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

3. Summary of Issues in Dispute

The claimant, a then 58 year old male, was involved in a motor vehicle accident which occurred on May 29, 2023. Following the accident, the claimant sought treatment for the injuries sustained and on September 13, 2023, he presented for a right shoulder arthroscopy, the services at issue herein. The Respondent denied the claim based on the claimant's failure to appear for two scheduled Examinations Under Oath.

The issue to be determined is whether the Respondent established that Applicant committed a policy violation?

#### 4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR Center. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR Center maintained by the American Arbitration Association.

It is now well settled that Applicant establishes "a prima facie showing of their entitlement to judgment as matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dep't. 2004). In the case at bar, Applicant has met this burden.

#### **EUO No-Show**

In order to support a defense based upon an assignor's alleged failure to appear for an Examination Under Oath (hereinafter referred to as "EUO"), the burden is on Respondent to demonstrate prima facie: 1) The EUO requests were actually mailed; and 2) the assignor failed to appear for the scheduled EUOs. See generally, Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.2d 720 (2d Dep't. 2006).

In the linked matter of Electromeg Supply Corp v. Maya Assurance Company, AAA Case Number 17-23-1326-5869, I held the following:

In this matter the Respondent failed to establish it's no show defense as it failed to submit proof the Applicant failed to appear for two EUO's. Specifically, the Respondent's EUO scheduling letters advise the claimant that the EUO is to be held at Lexitas Court Reporting - Nassau, 1225 Franklin Avenue, Lower Level #LL117, Garden City, New York 11530 on September 13, 2023 and October 6, 2023. However, the no show affirmations signed by Bryan Visnius, Esq. and Angela Walsh, Esq. respectively, state that they have been virtually present, logged into Zoom and the claimant failed to appear. Although the statements on the record indicate the parties agreed to appear virtually, there is no correspondence to support these statements nor is there any evidence that a Zoom link was provided to the claimant. Nothing in the record reflects these EUO's were scheduled virtually, via

Zoom. Therefore, the Respondent's denials based on EUO no show cannot be sustained as they failed to submit proper evidence of two missed EUOs.

Therefore, the Applicant's claim is granted.

In this case, the Respondent submitted an email report with an EUO virtual link to further support its position. However, 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 (1984). The following 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, 53 N.Y.2d 285, 291 (1981). 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 502 (1976)."

I find that the standard for Collateral Estoppel has been met as there is an identity of issues which has already been decided in the prior arbitration matter. It involved the same defense and denial based EUO no show. This issue was already decided, and I find that the Respondent had a full and fair opportunity to contest the decision and defend on the merits. The fact that the Respondent provided proof of a virtual EUO in the present matter is of no moment because it failed to do so in the prior matter. There is already an award concerning this specific defense and the Respondent should not be afforded a "second bite of the apple."

Therefore, the Applicant's claim is granted in the amount of \$3,639.28 in accordance with the Respondent's unrebutted fee coder audit.

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	Amount Amended	Status
	<b>Tri-Borough NY Medical Practice PC</b>	<b>09/13/23 - 09/13/23</b>	<b>\$9,610.25</b>	<b>\$6,575.63</b>	<b>Awarded: \$3,639.28</b>
<b>Total</b>			<b>\$9,610.25</b>		<b>Awarded: \$3,639.28</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/01/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. 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).

- C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee, in accordance with 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, Laura E. Villeck, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

07/16/2024  
(Dated)

Laura E. Villeck

#### **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:**  
891e7931b490c6de7e4a11a831772ff9

### Electronically Signed

Your name: Laura E. Villeck  
Signed on: 07/16/2024