

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

H Levitan Medical PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-22-1279-9695

Applicant's File No. DK22-321372

Insurer's Claim File No. 3231Z657L

NAIC No. 29742

ARBITRATION AWARD

I, Linda Filosa, 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 06/24/2024
Declared closed by the arbitrator on 06/24/2024

Sakrit Srivastava, Esq from Tsirelman Law Firm PLLC participated virtually for the Applicant

Lauren Hirschfeld from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,322.64**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant acknowledges payments made based upon cashed drafts that have been uploaded and has amended the amount in dispute to \$0, but seeks interest on payments.

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

3. Summary of Issues in Dispute

The Assignor is a 57year old male that was involved in a motorcycle accident on 8/21/22. The Assignor received medical treatment on 9/7/22. The Applicant is seeking reimbursement and the Respondentnow submits the medical payment policy has been exhausted and no further coverage exists.

4. Findings, Conclusions, and Basis Therefor

The record in this case consists of claimant's submission and respondent's submission. In accordance with 11 NYCRR 65-4.5 (o) (1) (Regulation 68-D), the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems to making an award that is consistent with the Insurance Law and Department Regulations.

A claimant "(makes) a prima facie showing of entitlement to judgment as matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hospital v. Allstate Insurance Company 5 AD 3rd 742, 774 N.Y.S 2d 564 (2nd Dept. 2004).

The Applicant has established their prima facie as stated above. The burden now switches to the Respondent.

Respondent refers to 11 NYCRR 65, which states in pertinent part:

Exclusions This coverage does not apply to personal injury sustained by: (e) any person while occupying a motorcycle. The Assignor in this case was driving a motorcycle.

The Respondent maintains the only coverage available to the Assignor is medical payment coverage of \$1,000, which has been exhausted. As such, no further coverage exists, as this is a motorcycle accident.

Respondent has met their burden by uploading the payment ledger and copy of policy. The Payment ledger indicates the medical payment coverage of \$1,000 has been paid.

The policy indicates the coverage available for motorcycle does not include New York No Fault coverage, as there is a policy exclusion. Thus, the Respondent submitted a letter advising the Applicant and the provider that the medical payment coverage has exhausted.

Applicant argues no NF-10 was sent to the Assignor and Applicant to specifically deny this bill. However, I find the letter properly apprises the parties involved that no further coverage exists under the medical payment coverage of the Assignor's insurance policy.

The Respondent states that payment was issued on 8/25/23 and this is indicated on the cashed drafts. The bills in dispute are for dates of service 7/6/22-7/7/22. The Applicant seeks interest on the late payments. I find that this is owed.

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, 12 N.Y.3d 217 (2009).

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
	H Levitan Medical PC	07/07/22 - 07/07/22	\$130.28	\$0.00	Awarded (interest only)
	H Levitan Medical PC	07/07/22 - 07/07/22	\$486.55	\$0.00	Awarded (interest only)
	H Levitan Medical PC	07/07/22 - 07/07/22	\$522.36	\$0.00	Awarded (interest only)
	H Levitan Medical PC	07/07/22 - 07/07/22	\$183.45	\$0.00	Awarded (interest only)
Total			\$1,322.64		Awarded: \$0.00

B. 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 11 NYCRR 65-4.6(d).

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

07/24/2024
(Dated)

Linda Filosa

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:
7d64d250dfa501456ffec2c7913dac6

Electronically Signed

Your name: Linda Filosa
Signed on: 07/24/2024