

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

MDCA Psychology Care PC  
(Applicant)

- and -

Hereford Insurance Company  
(Respondent)

AAA Case No. 17-23-1329-1768

Applicant's File No. NA

Insurer's Claim File No. 101505-02

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Steven Celauro, 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: AG

1. Hearing(s) held on 05/23/2024  
Declared closed by the arbitrator on 05/23/2024

Roman Kulik from Kulik Law Firm, PC participated virtually for the Applicant

Chris Fingerhut from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$980.06**, 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

This arbitration arises out of medical treatment for the EIP (AG), a 35-year-old female, related to injuries sustained in a motor vehicle accident that occurred on 12/31/22. Applicant seeks reimbursement for psychological services provided from 1/31/23 to 2/7/23. Respondent denied reimbursement asserting that based on the EUO testimony of AG, the treatment as billed was not performed by the medical provider. A fee schedule defense was not set forth at the hearing.

4. Findings, Conclusions, and Basis Therefor

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]).

The Respondent asserts that the Applicant is not entitled to reimbursement contending that the Applicant did not perform the services billed.

11 NYCRR §65-3.8(g)(1) states proof of the fact, and amount of loss sustained pursuant to Insurance Law section 5106(a) shall not be deemed supplied by an applicant to an insurer and no payment shall be due for such claimed medical services under any circumstances: (i) when the claimed medical services were not provided to an injured party; or (ii) for those claimed medical service fees that exceed the charges permissible pursuant to Insurance Law sections 5108(a) and (b) and the regulations promulgated thereunder for services rendered by medical providers.

The Respondent bases its denial upon the EUO of the EIP which took place on 4/17/23. In particular, the Respondent points to the EIP's testimony where he states that the accident did not cause fear and that it was not suggested that he see somebody for a psychological evaluation.

The Applicant has submitted an authorization to perform psychological testing signed by the EIP, a psychological testing questionnaire completed by the EIP, and a document signed by the EIP indicating that 3 diagnostic tests were performed.

After reviewing the EUO testimony, I find that it was unclear and failed to establish that the services at issue were not performed. The Respondent merely relies upon testimony stating that that nobody suggested that the EIP obtain a psychological evaluation, however, the evidence does not establish that psychological services and testing were never performed. The Respondent's attorney had the opportunity to question the EIP further to clarify the specific services performed, but instead allowed the testimony to remain vague and inconclusive. I find that the questions posed, and the responses given, which included the lack of sufficient follow-up questioning, were not specific and detailed enough to lead me to reasonably believe that the Applicant did not perform the services billed.

The burden remains on the Respondent to establish its defense that the services were not provided. Accordingly, I find that the Respondent has not established its defense and find in favor of the Applicant.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

The Applicant and the Respondent submitted documentary evidence in support of their respective positions. All such evidence is contained within MODRIA maintained by the American Arbitration Association, as of the date of the hearing. The above noted decision is based upon my review of the submitted evidence, along with the oral argument of the representatives present at the hearing; only the arguments offered at the

hearing are preserved in this decision. Any arguments not presented at the hearing are considered waived.

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
	MDCA Psychology Care PC	01/31/23 - 01/31/23	\$254.78	Awarded: \$254.78
	MDCA Psychology Care PC	01/31/23 - 01/31/23	\$241.76	Awarded: \$241.76
	MDCA Psychology Care PC	02/07/23 - 02/07/23	\$483.52	Awarded: \$483.52
Total			\$980.06	Awarded: \$980.06

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/15/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the filing date for this case until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a minimum of \$60 and a maximum of \$850. See, 11 NYCRR 65-4.6 (c) and (e). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6 (b). For cases filed after February 4, 2015, there is no minimum fee and a maximum fee of \$1360.00.

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

08/02/2024  
(Dated)

Steven Celauro

**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:**  
a2fc507d3bc858f69a6b31e7d1c3e81c

### **Electronically Signed**

Your name: Steven Celauro  
Signed on: 08/02/2024