

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mednavet, Inc  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-24-1334-0359

Applicant's File No. 512087

Insurer's Claim File No. 0608828109

NAIC No. 19240

**ARBITRATION AWARD**

I, Rebecca Feder, 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: EIP

1. Hearing(s) held on 06/05/2024  
Declared closed by the arbitrator on 06/05/2024

David Forman, Esq. from Leon Kuchеровsky Esq. participated virtually for the  
**Applicant**

Chris Gavin, Esq. from Law Offices of John Trop participated virtually for the  
**Respondent**

2. The amount claimed in the Arbitration Request, **\$3,846.62**, 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

Applicant is seeking reimbursement of durable medical goods (DME) denied based on material misrepresentation.

This arbitration arises out of treatment of a 57 year old male for DME provided on 12/24/20-1/29/21. The EIP was involved in a motor vehicle accident on 11/18/20. Respondent denied reimbursement of the services based on this defense: **These claims are denied based upon Allstate Insurance Company's investigation and the examination under oath of Jeffrey Jones conducted on May 3, 2021 and the non appearance of policyholder Claudine Segree. These claims are denied based upon materialmisrepresentations/omissions made by Jeffrey Jones in the insurance**

**application and/or policy renewal regarding the location where the insured vehicle would be parked/garaged. Allstate further determined that it would not have issued or renewed the policy at the same rate had Jeffrey Jones disclosed in the insurance application and/or policy renewal the location where the insured vehicle would be primarily parked/garaged and that he is the owner of the 2015 Buick.**

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

These findings and conclusions are based on my review of the records on the ADR Center maintained by the American Arbitration Association as of the date the hearing was declared closed and oral argument at the hearing. 11 NYCRR § 65-4.5(o)(1) provides that an arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to the legal rules of evidence shall not be necessary. The arbitrator may question or examine 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.

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It is Applicant's *Prima Facie* obligation to establish its entitlement to payment for each service for which reimbursement is sought. It is well settled that a health care provider establishes its *Prima Facie* entitlement to payment as a matter of law by 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]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term. 2<sup>nd</sup> & 11<sup>th</sup> Jud Dists]).

Herein, Applicant established its *Prima Facie* entitlement to first party no-fault benefits by proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits were overdue.

In a linked award for the same EIP and the same defense, Arbitrator Greta Vilar found for Applicant. In her award Body Logistics PT, PC v. Allstate, 17-21-1227-5584, she wrote:

**Instead, the respondent intends to proceed on its material misrepresentation defense. The explanation of benefits states that the patient misrepresented the actual garaging location of the insured vehicle. The explanation of benefits further states that the policy would not have been issued had the patient disclosed the actual garaging location. The respondent's position is based upon testimony received from the patient insured in which he indicated that he resided in Rockaway Beach New York. However, when the policy was obtained, the garaging address located in North Carolina was provided. The respondent has submitted an affidavit stating that had the policy been issued with a New York garage address, the premium would have been nearly 10 times the premium for the North Carolina address.**

**The respondent has included a copy of an EUO transcript of the patient insured taken on May 3, 2021. He indicated that his current address was in Rockaway Beach, New York, and he had resided there for 20 years. At the time of the accident the patient was operating a vehicle owned by his son's mother who resided in North Carolina. The patient had purchased the vehicle in 2015 for her to use in North Carolina. However, they frequently shared use of the vehicle. He testified that two or three months out of the year, he has possession of the vehicle and drives it in New York. The rest of the time, the vehicle is in North Carolina. It is the respondent's position that this constituted material misrepresentation as to the garaging address of the vehicle, and that the applicant's claim should therefore be dismissed.**

**An insurer's assertion that the subject insurance policy was obtained by fraud and/or material misrepresentations is a permissible affirmative defense that, if proved, precludes any recovery by the insured or a health care provider who accepts an assignment of the insured's No-Fault benefits. *Golden Age Medical Supply, Inc. v. Clarendon National Ins. Co.*, 29 Misc.3d 136(A), 918 N.Y.S.2d 397, 2010 N.Y. Slip Op. 52010(U), 2010 WL 4751752 (App. Term 2d, 11th & 13th Dists. Nov. 19, 2010).**

**Where it is established that an assignor misrepresented his state of residence in connection with the issuance of the insurance policy in question, he becomes ineligible to receive first-party No-Fault benefits and the health care provider may not recover. *Central Radiology Services, P.C. v. Commerce Ins. Co.*, 31 Misc.3d 146(A), 930 N.Y.S.2d 173, 2011 N.Y. Slip Op. 50948(U), 2011 WL 2089709 (App. Term 2d, 11th & 13th Dists. May 23, 2011).**

**Having thoroughly reviewed the records before me I find that the respondent has failed to meet its burden of proof on the issue of fraud. The patient's testimony as to the garaging location does not definitively establish that he misrepresented the policy address of the vehicle. Rather, he states that he purchased the vehicle for his**

**girlfriend in North Carolina, which is where the vehicle was typically kept. The fact that he testified to sometimes bringing the vehicle to New York for periods of time does not establish the respondent's defense of material misrepresentation in obtaining the policy. The applicant is awarded accordingly.**

So too here, based on Collateral Estoppel, I find in favor of Applicant.

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
	Mednavet, Inc	12/24/20 - 01/29/21	\$3,846.62	Awarded: \$3,846.62
Total			\$3,846.62	Awarded: \$3,846.62

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/26/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested 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. 11NYCRR 65-3.9(c), LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., \_\_ A.D.3d \_\_, \_\_ N.Y.S.2d \_\_. 2007 WL 4531300 (3d Dept. 2007); Hempstead General Hosp. v. Insurance Co. of North America, 208 A.D.2d 501, 617 N.Y.S.2d 478 (2d Dept. 1994); Smithtown General Hosp. v. State Farm Mut. Auto Ins. Co., 207 A.D.2d 338, 615 N.Y.S.2d 426 (2d Dept. 1994). The end date for the calculation of interest shall be the date of payment of the claim. Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant, the amount of interest at the rate of 2% per month, simple, and ending with the date of payment of the award.

#### C. Attorney's Fees

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

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(e). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b)s

- 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 Suffolk

I, Rebecca Feder, 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)

Rebecca Feder

### **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:**  
4f329df058727d980ba425fe2787b9e8

### Electronically Signed

Your name: Rebecca Feder  
Signed on: 08/02/2024