

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Gregory Montalbano MD PLLC d/b/a IOrtho	AAA Case No.	17-24-1332-1496
The Orthopedic Institute f/n/a Regional	Applicant's File No.	I-ORTHO 103-24
Orthopedics	Insurer's Claim File No.	0563517820101049
(Applicant)	NAIC No.	22063
- and -		

Geico Insurance Company
(Respondent)

ARBITRATION AWARD

I, Amanda R. Kronin, 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: DH

1. Hearing(s) held on 08/01/2024
Declared closed by the arbitrator on 08/01/2024

Joseph Sparacio, Esq from Joseph Sparacio Attorney at Law PLLC participated virtually for the Applicant

James Ciscone from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$13,443.86**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant submitted amended claims totaling \$127.41 for the treatment at issue on 7/05/23. All other dates of service were withdrawn as paid .

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

3. Summary of Issues in Dispute

The injured person/assignor, DH, was a 62-year-old female driver involved in the subject motor vehicle accident on 2/13/21. The Assignor underwent treatment on 9/20/22 billed in the amended amount of \$127.41. The treatment was denied on an Independent Medical Exam performed by Dr. Joseph Margulies, MD dated 8/09/21 with an IME cutoff date of 8/29/21. The issue presented is whether the doctrine of collateral estoppel applies to the treatment performed on 9/20/22.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

It is well-settled that a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v. General Assurance Co., 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2d Dept., June 2, 2006; See: Insurance Law § 5106 a, Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD3d 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, 2d & 11th Jud. Dists.)]. See also: 11 NYCRR §65-1.1, Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co., 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006.

In support of its position, Applicant submitted amended claims totaling \$127.41 for the treatment at issue on 7/05/23. All other dates of service were withdrawn as paid .

I find that the bill was timely and properly submitted. At the hearing, no issues were raised as to the timeliness or content of the Denial based upon a lack of medical necessity defense. I deem that the Applicant has established a prima facie case of entitlement to

reimbursement herein based upon the submissions and that the burden shifts to the Respondent to establish its defense. The issue presented is whether the services are medically necessary.

I note that the instant matter is linked to a matter in which Arbitrator Connor rendered an award in favor of the Applicant. (AAA Case#17-22-1400-9343). That particular case involved the same Assignor, motor vehicle accident and the same basis for denying the claim which was premised upon the same IME by Dr. Margulies. The doctrine of collateral estoppel applies in this matter as Arbitrators O'Connor and Gloumis have already considered Dr. Margulies' IME report and found in Applicant's favor.

Respondent has had a full and fair opportunity to contest the decision.

I therefore find that the doctrine of collateral estoppel is applicable to the services at issue. There was no new evidence submitted by Respondent herein that would warrant a different result being reached in the instant matter. I, therefore, find that the doctrine of collateral estoppel is applicable to the services at issue herein.

Accordingly, I adopt the rationale set forth by the prior decision, based upon the same evidence herein and rule that the Applicant's claim is granted. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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
	Gregory Montalban o MD PLLC d/b/a Ortho The Institute f/n/a Regional Orthopedic s	07/05/23 - 07/05/23	\$127.41	\$127.41	Awarded: \$127.41
	Gregory Montalban o MD PLLC d/b/a Ortho The Institute f/n/a Regional Orthopedic s	08/10/23 - 08/10/23	\$589.04		Withdrawn with prejudice

	Gregory Montalban o MD PLLC d/b/a IOrtho The Orthopedic Institute f/n/a Regional Orthopedic s	09/01/23 - 09/01/23	\$127.41		Withdrawn with prejudice
	Gregory Montalban o MD PLLC d/b/a IOrtho The Orthopedic Institute f/n/a Regional Orthopedic s	09/20/22 - 09/20/22	\$12,600.0 0		Withdrawn with prejudice
Total			\$13,443.8 6		Awarded: \$127.41

B. The insurer shall also compute and pay the applicant interest set forth below. 01/11/2024 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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360." 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 Suffolk

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

08/05/2024
(Dated)

Amanda R. Kronin

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:
4a9a2f145e6fd727411318de4097b9bb

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 08/05/2024