American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Braddock Express Inc (Applicant)	AAA Case No.	17-24-1336-8305
	Applicant's File No.	SS-261226
- and -	Insurer's Claim File No.	238036263-007
	NAIC No.	Self-Insured
Avis Budget Group (Respondent)		

ARBITRATION AWARD

I, Vincent Gerardi, 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: Injured Party

1. Hearing(s) held on 07/26/2024
   Declared closed by the arbitrator on 07/26/2024

   Joseph Padrucco, Esq. from Samandarov & Associates, P.C. participated virtually for the Applicant

   Michele Rita, Esq. from Hollander Legal Group PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$690.23**, 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 case arises from a motor vehicle accident that occurred on 9/16/23. The eligible injured party was the driver in a motor vehicle. The issue in dispute is the denial of claim for a shoulder orthosis based upon the failure to attend an Independent Medical Examination resulting in the termination of No-Fault benefits. The respondent's denial was timely denied.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center as of the date of the Hearing and entered in to the ADR Center, and have considered the oral arguments of the parties. Initially, according to the First Amendment to Regulation 68-D 11NYCRR 65-4.5, the Arbitrator shall be the judge of the relevance and materiality of the evidence offered that the Arbitrator deems relevant to making an Award that is consistent with Insurance Law and Insurance Department Regulations.

This case arises from a motor vehicle accident that occurred on 9/16/23. The eligible injured party was a sixty-three-year-old male. The injured party did not seek emergency medical attention following the motor vehicle accident. The injured party's initial chief complaints were injuries to the neck, bilateral-shoulders, midback, and right-knee. There was decreased range-of-motion in the cervical-spine as well as the bilateral-shoulders and right-knee. The Spurling, Foraminal-Compression, Cervical-Distraction, Shoulder-Depression, Impingement, and Supraspinatus, Tests were positive. The injured

party started a treatment plan. The injured party was prescribed durable medical equipment by his treating physician, Dr. Gamil Kostandy, M.D. A review of the medical records reflects that the injured party to date has received physical therapy, chiropractic care, examinations, evaluations, consultations; neurologist/ orthopedist, EMG-NCV studies, MRI studies; cervical/ right-shoulder/ left-shoulder/ right-knee, pharmaceuticals, and durable medical equipment. The issue before me is the reimbursement of claim for a shoulder orthosis received on 11/28/23.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursement for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

It is well settled that an applicant for no-fault benefits establishes its prima facie entitlement to payment by proving that it submitted a claim, set forth the fact and the amount of the loss sustained, and that payment of no-fault benefits were overdue (see Insurance Law 5106(a), Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564, 2004 N.Y. App. Div. LEXIS 3597 (2nd Dept. 2004), Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128(A), 2003 N.Y. Slip Op. 51701(U) (App Term 2nd & 11th Jud Dists). A "facially valid claim" is presented where it sets forth the name of the patient, date of accident, date of services, description of services rendered and the charges for those services (see Vinings Spinal Diagnostic P.C. v. Liberty Mutual Insurance Company, 186 Misc. 2d 287, 717 N.Y.S. 2d 466 (1st Dist. Ct. Nass. Co.).

The applicant's claim was denied based upon the failure of the injured-party to attend an Independent-Medical-Examination. The respondent requested an IME of the injured-party assignor on 11/27/23; the injured-party was duly noticed by letter. The doctor whom was to perform the IME, Dr. Robert Snitkoff, D.C., has offered an affidavit with personal knowledge attesting to the nonappearance of the injured-party at the IME on 11/27/23. The respondent again requested an IME of the injured-party assignor on 12/18/23; the injured-party was duly noticed by letter. The doctor whom was to perform the IME, Dr. Brian Wolin, D.C., has offered an affidavit with personal knowledge attesting to the nonappearance of the injured-party at the IME on 12/18/23.

I find that the respondent has produced credible evidence that proper notice was given to the injured-party and that the injured-party failed to appear for the IME. The failure of the injured-party to appear for a duly noticed IME is a breach of a condition precedent to the auto insurance policy (see, Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, 82 A.D. 3d 599, 918 N.Y.S. 2d 478, 2011). Where a healthcare provider's assignor failed to attend IMEs as in the case at bar, denial of the provider's claim is appropriate (see, Vega Chiropractic P.C. v. Clarendon National Ins. Co., 25 Misc. 3d 144(A), 906 N.Y.S. 2d 766 (Table) 2009).

Accordingly, when the assignor failed to appear for the requested IME, respondent has the right to deny all claims retroactive to the date of loss, regardless of whether the denials were timely (see 11NYCRR 65-3.8(c). No issue has been raised that the IME notices were unreasonable or invalid. Under Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, 82 A.D. 3d 559, 918 N.Y.S. 2d 473 (1st Dept. 2011), the Appellate Division set forth, that failing to attend IMEs, constitutes a breach of a condition precedent to coverage under the no-fault policy which results in there being no coverage. The insurer may deny all claims retroactively to the date of loss (see, Neomy Medical P.C. v. American Transit Ins. Co., Civil Court of the City of New York, Kings County, 2011 N.Y. Slip Op. 50536(U).

In conclusion, this Arbitrator has decided this matter as to what could be fairly described as well settled law on the subject at bar (see In the Matter of State Farm Mutual Automobile Insurance Company v. Lumbermens Mutual Casualty Co., 18 A.D. 3d 762, 763 (2nd Dept 2005). Failure of this Arbitrator to follow overwhelmingly clear precedent on the issue at bar would be arbitrary and capricious (see State Ins. Fund v. Country-Wide Ins. Co., 276 A.D. 2d 432 (1st Dept 2000).

Accordingly, the applicant's claim is denied in its entirety.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

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

08/26/2024
(Dated)

Vincent Gerardi

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:
f9f4766763df0acd58bb24061453d8d5

Electronically Signed

Your name: Vincent Gerardi
Signed on: 08/26/2024