

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

LR Medical PLLC  
(Applicant)

- and -

Maya Assurance Company  
(Respondent)

AAA Case No.	17-24-1345-5304
Applicant's File No.	NF-26877-1495860
Insurer's Claim File No.	220178-01
NAIC No.	36030

**ARBITRATION AWARD**

I, Glen Wiener, 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 09/05/2024  
Declared closed by the arbitrator on 09/05/2024

Jeremy Davis, Esq. from Sanders Grossman Aronova PLLC participated virtually for the Applicant

Angeliki Kokkosis, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$483.88**, 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

Assignor K.D. was injured in an automobile accident on June 16, 2022. On February 3, 2023, and February 6, 2023, Applicant provided medical services to Assignor. Respondent denied Applicant's requests for reimbursement alleging in part, that Assignor failed to appear for a scheduled and rescheduled physical examination.

The question presented herein is whether Assignor's failure to attend the scheduled and rescheduled physical examinations should result in a denial of Applicant's claim.

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

The decision below is based on the documents on file in the Electronic Case Folder maintained by the American Arbitration Association as of the date of this hearing and on oral arguments of the parties. No witness testimony was produced at the hearing.

Assignor K.D. was injured in an automobile accident on June 16, 2022. Applicant LR Medical PLLC as assignee of K.D. seeks \$483.88 reimbursement, with interest and counsel fees under the No-Fault Regulations for medical services provided to Assignor on February 3, 2023, and February 6, 2023.

Respondent Maya Assurance Company insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., Respondent was obligated to reimburse the injured party (or their assignee) for all reasonable and necessary medical expenses arising from the use or operation of the insured vehicle.

Respondent denied Applicant's requests for reimbursement alleging in part, that Assignor failed to appear for a scheduled and rescheduled physical examination.

Respondent submitted copies of notices addressed to Assignor and her attorney Jeff Aronsky, Esq. scheduling the orthopedic physical examination appointments with Aruna Senevirante, M.D.

On November 11, 2022, Respondent requested Assignor attend the first scheduled examination on December 7, 2022. According to the affidavit submitted, Dr. Senevirante was in her office and Assignor failed to attend the first examination.

On December 9, 2022, a second notice was sent to Assignor and her attorney requesting attendance at the rescheduled examination on December 28, 2022. According to the second affidavit submitted, Dr. Senevirante was in her office that day and Assignor failed to attend the second examination.

An assignee can have no better rights than the assignor. Assignor's breach cuts off the assignee's rights. The requirement that a patient attend a medical examination by a physician selected by the insurance carrier is set forth in both the regulations [11 NYCRR §65-1.1(d)], and in the contract of insurance under the Mandatory Personal Injury Protection Endorsement. The section of that Endorsement that is headed "Conditions," begins as follows:

*Action Against Company. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.*

The third paragraph thereafter, under the same section states:

*The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.*

"In any case of a claim for the treatment of an alleged personal injury it is difficult to see how a medical examination is not appropriate if the insurer wishes it. It is not for the claimant or the arbitrator to determine that the examination will be futile or that it will not disclose information of value to the insurer in determining whether to pay or defend against the claim." *Insurance Co. of America v. Franck*, 102 Misc.2d 998, 424 N.Y.S.2d 816 (Sup. Ct. N.Y. Co. 1979).

The Appellate Division has held that "the appearance of the insured at IMEs at any time is a condition precedent to the insured liability on the policy." *Stephen Fogel Psychological PC v. Progressive Insurance Company*, 35 A.D.3d 720, 827 N.Y.S.2d 217 (2d Dept. 2006).

Once Assignor failed to appear for the requested exams, Respondent had the right to deny all claims retroactively to the date of loss, regardless of whether the denials were timely issued [*American Tr. Ins. Co. v Lucas*, 111 A.D.3d 423, 974 N.Y.S.2d 388 (1st Dept. 2013)], and even though Respondent initially denied the claims on different grounds. *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 A.D.3d 559, 560 [2011], *lv denied* 17 N.Y.3d 705 [2011]) *See also Healthy Way Acupuncture, P.C. v. Allstate Ins. Co*, 43 Misc.3d 141(A), 993 N.Y.S.2d 644(App. Term 1st Dept. 2014).

The First Department has made it clear this coverage defense applies to any claim and is not determined on a bill-by-bill basis. *Unitrin Advantage Ins. Co. v Dowd*, 194 A.D.3d 507, 143 N.Y.S.3d 543 (1st Dept. 2021)

Respondent's submissions established prima facie that it properly scheduled Assignor for the examinations and that Assignor failed to appear by submitting the letters sent to the assignor and his attorney notifying them about the date, time, and location of the initially scheduled IME and a second scheduled IME, and affidavits of service for these letters.

Respondent also submitted affidavits from Dr. Senevirante, stating that she was in her office at the date and time of the scheduled IME and Assignor failed to appear. *See, Hereford Ins. Co. v Lida's Med. Supply, Inc.*, 2018 NY Slip Op 03226 (May 3, 2018, App. Div. 1st Dept.)

"In opposition, [Applicant] did not specifically deny the assignor's nonappearance or otherwise raise a triable issue with respect thereto, or as to the mailing or reasonableness of the underlying notices." *MDJ Med., P.C. v. Praetorian Ins. Co.*, 43 Misc.3d 145(A), 993 N.Y.S.2d 644 (App. Term 1st Dept. 2014) citing *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 A.D.3d 559, 560 (2011), lv denied 17 N.Y.3d 705 (2011).

It appears Assignor simply ignored Respondent's requests and accordingly such inaction results in a waiver of any defects or violations. See *Flatlands Medical, PC v. State Farm Mut. Auto Ins. Co.*, 38 Misc.2d 135(A) 966 N.Y.S.2d 345 (App. Term 2d, 11th, and 13th Jud. Dist. 2013); *Crescent Radiology, PLLC v. American Transit Ins. Co.*, 31 Misc.3d 134(A), 927 N.Y.S.2d 815 (App. Term 9th & 10th Dists. 2011).

Significantly, the courts have vacated arbitrator's awards that failed to hold an assignor's failure to attend duly scheduled IMEs voided the contract *ab initio*. *Matter of Global Liberty Ins. Co. of New York v. Top Q. Inc.*, 175 A.D.3d 1131, 2019 N.Y. Slip Op. 06445 (1st Dept. 2019), vacating *Matter of Arbitration of Top Q Inc v. Global Liberty Ins. Co. of New York*, AAA Case No. 99-16-1051-4359 (Robyn D. Weisman, Master Arb., May 9, 2018), *aff'g*, AAA Case No. 17-16-1051-4359 (Burt Feilich, Arb., Feb. 28, 2018).

Accordingly, Applicant's request for reimbursement is denied and Respondent's denial is sustained based upon Assignor's failure to appear for the scheduled and rescheduled physical examinations. This award is in full disposition of all No-Fault benefit claims submitted to 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 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 New York

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

09/05/2024

(Dated)

Glen Wiener

### **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:**  
17a0acec1b2ad608582ea1816f0e29ad

### **Electronically Signed**

Your name: Glen Wiener  
Signed on: 09/05/2024