

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Physical Medicine & Rehab Of NY PC  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-24-1340-8425

Applicant's File No. N/A

Insurer's Claim File No. 32-38S7-78V

NAIC No. 25178

**ARBITRATION AWARD**

I, Meryem Toksoy, 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 (LH)

1. Hearing(s) held on 08/27/2024  
Declared closed by the arbitrator on 08/27/2024

Michael Galeno, Esq. from Dino R. DiRienzo Esq. participated virtually for the  
Applicant

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

2. The amount claimed in the Arbitration Request, **\$3,445.00**, 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 the assignee of a 67-year-old female who was injured as a driver in a motor vehicle accident on 09-03-22.

It contends that **\$3445.00** is owed on its claim. This sum, which covers the period of 08-21-23 to 10-30-23, is for **physical therapy, office visits, and an EMG/NCV test (performed on the assignor's lower extremities)**.

Respondent, looking to obtain an award in its favor, argues there was no medical need for the treatment.

Based on the report for the Independent Medical Examination (**IME**) by Vijay Sidhwani, DO on 06-21-23 (which resulted in a cutoff of benefits effective 08-19-23), it asserts the claim should be denied in full.

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

The case was decided on 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.

There were no witnesses.

### LEGAL FRAMEWORK

A presumption of medical necessity attaches to an applicant's properly submitted claim form; upon its receipt, the burden is on the insurer to demonstrate otherwise. Amaze Med. Supply v. Eagle Ins. Co., 2 Misc.3d 128(A), 2003 NY Slip Op 51701(U)(App Term, 2<sup>nd</sup> Dept, 2<sup>nd</sup> and 11<sup>th</sup> Jud Dists., Dec. 24, 2003).

To carry this defense, the insurer is required to "set forth with sufficient particularity the factual basis and medical rationale underlying that determination." Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 2006 NY Slip Op 51185(U)(App Term, 2<sup>nd</sup> Dept, 9<sup>th</sup> and 10<sup>th</sup> Jud Dists., June 8, 2006).

If the insurer can establish there was no need for the services, the burden will then shift to the applicant. West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) (App Term, 2<sup>nd</sup> Dept, 2<sup>nd</sup> & 11<sup>th</sup> Jud Dists., Sept. 29, 2006).

To succeed, the applicant must offer evidence which serves to rebut the conclusion(s) stated in the peer review. High Quality Medical, P.C. v. Mercury Ins. Co., 26 Misc.3d 145(A), 2010 N.Y. Slip Op.50447(U)(App. Term, 2<sup>nd</sup> Dept, 2<sup>nd</sup>, 11<sup>th</sup> & 13<sup>th</sup> Jud. Dists, Mar. 10, 2010). The same applies for IMEs. High Quality Medical, P.C. v. Mercury Ins. Co., 29 Misc.3d 132(A), 2010 N.Y. Slip Op.51900(U)(App. Term, 2<sup>nd</sup> Dept, 2<sup>nd</sup>, 11<sup>th</sup> & 13<sup>th</sup> Jud. Dists, Nov. 8, 2010).

In the absence of any persuasive proof to support the claim, the insurer's defense will stand, and the denials will be upheld. Quality Health Prods., Inc., v. Geico Ins. Co., 44 Misc 3d 139(A), 2014 NY Slip Op 51268(U)(App Term, 2<sup>nd</sup> Dept., 2<sup>nd</sup>, 11<sup>th</sup> & 13<sup>th</sup> Jud. Dists., Aug. 8, 2014).

## DECISION

### **I find in favor of the Applicant.**

The facts surrounding the claim serve to establish the assignor was in need of further treatment. At the point in time the cutoff became effective, she was still recovering from her injuries. The record, viewed in its entirety, proves this to be the case. See, for example:

- Evaluation(s) performed by:

Felix Almentero, MD on 09-12-22, 10-12-22, 12-05-22, 01-09-23, 03-06-23, 05-01-23, 06-26-23, 08-14-23, 10-09-23, 12-06-23;

David Capiola, MD on 11-08-22;

Rajivan Maniam, MD on 01-23-23;

Lyle Posecion, MD on 06-01-23.

- Test results that pertain to:

An MRI of the cervical spine on 09-27-22;

An MRI of the left knee on 09-28-22;

An EMG/NCV of the lower extremities on 10-30-23.

Given the evidence, the claim is hereby granted in full.

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
	Physical Medicine & Rehab Of NY PC	08/21/23 - 10/30/23	\$3,445.00	Awarded: \$3,445.00
Total			\$3,445.00	Awarded: \$3,445.00

B. The insurer shall also compute and pay the applicant interest set forth below. 03/19/2024 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.

With respect to the interest accrual date (when arbitration was requested), see specifically, 11 NYCRR 65-3.9(c).

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. "If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Department of Financial Services regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken." 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

As the claim was filed subsequent to the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D) which took effect on February 4, 2015, Attorney's Fees shall be calculated pursuant to the amended terms, as follows:

20 percent of the amount of first-party benefits, plus interest thereon, subject to a maximum fee of \$1,360. [11 NYCRR 65-4.6(d)]. There is no minimum fee.

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

09/07/2024  
(Dated)

Meryem Toksoy

### **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:**

c44827144102a3b8123a8d98e8551d6f

### Electronically Signed

Your name: Meryem Toksoy  
Signed on: 09/07/2024