

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Joseph A Raia MD PC
(Applicant)

- and -

USAA General Indemnity Company
(Respondent)

| | |
|--------------------------|--------------------|
| AAA Case No. | 17-24-1333-7619 |
| Applicant's File No. | n/a |
| Insurer's Claim File No. | 052327903-0800-000 |
| NAIC No. | 25941 |

ARBITRATION AWARD

I, Matthew J. Cavalier, 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 09/17/2024
Declared closed by the arbitrator on 09/17/2024

Rajesh Barua, Esq from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Matthew A. Gray, Esq from Marshall Dennehey participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$336.26**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated no fee schedule issues and to the date upon which interest shall accrue, January 24, 2024.

3. Summary of Issues in Dispute

Whether the Assignor, a 27-year-old male ("LC") on the date of the accident ("DOA") who is the eligible injured party ("EIP"), injured in an alleged motor vehicle accident

("MVA") on May 9, 2023, who received medical services on date of service ("DOS") November 15, 2023, and whether these services were correctly billed in the sum of \$336.26 and timely submitted by the Applicant,

Whether the Respondent can maintain its defense that the Underlying insurance policy was obtained through the material misrepresentation of facts in the original application for insurance by the Policy Holder?

4. Findings, Conclusions, and Basis Therefor

This matter falls under the First Amendment to Regulation 68D and, as such, only the documents submitted by the Applicant at the time of filing and by the Respondent during the conciliation will be considered.

Therefore, all documents contained in the ADR Center at the time of the Hearing have been considered. An Arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 NYCRR 65-45(0)(1).

Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms with the Insurance Laws and the New York State Insurance Department Regulations. **Matter of Medical Society v. Serio**, 100 N.Y.2d 854, 768 N.Y.S.2d 423 (2003).

There is one bill for DOS November 15, 2023, with a total sum in dispute of \$336.26 on the AR-1. Applicant submitted these bills to Respondent and Respondent denied payment of all bills for these DOS based on Respondent's SIU investigation that the Policy was obtain via the material misrepresentation of the insured's garage location of the vehicle involved in the MVA, it is not Saratoga Springs, NY, but Jamaica, NY, and that he is **NOT** a veteran, therefore the no fault insurance policy was fraudulently obtained.

Fee Schedule

The Parties agreed at the hearing that the correct NYSWC Fee Schedule sum of the DOS in dispute is \$336.26 and that is the sum to be awarded to the Applicant if they prevail.

Fraud in the Inducement to form the Insurance Contract

The sole issue before me is whether the Policyholder obtain the no fault insurance policy at a reduced premium through the material misrepresentation of facts, specifically the

use of an address that was not the domicile of the Policyholder in order to pay a reduced premium for the policy in question. The determination of this issue is purely a question of fact and must be determined by weighing the credible evidence.

The Respondent's attorney argued the following in support of their defense:

The Respondent denied this claim with a global NF-10 and a specific NF-10 dated November 7 & December 2, 2023, and these denials stated the following:

"Under the terms of the policy, USAA does not provide coverage for any covered person, as defined in this policy, who has knowingly concealed or misrepresented any material fact of circumstance relating to this insurance at the time application was made, at any time during the policy period or in connection with the presentation or settlement of a claim. Because the covered person knowingly concealed and/or misrepresented material facts in violation of the above terms, all no fault benefits are denied."

No issues were raised by the Applicant as to the timeliness of the denials.

Specifically, the Respondent relied upon the following Affidavits:

1. The December 19, 2023, Underwriting Affidavit of Respondent's employee, Lose Segura, an Underwriter of no-fault policies, who swears that the policy issued to Erika Lewis identified by No.: 052327903, LR#800 was materially cheaper with his withholding of the information as to the actual garage location of the insured vehicle and veteran status.
2. The EUO transcript from the August 8, 2023, EUO of the Assignor/Policyholder, LC.
 - a. LC swears his address in Jamaica Queens, NY.
 - b. LC swears his lives and works in Jamaica Queens, NY
 - c. LC swears his friend "Jimmy" completed the application for insurance with the Respondent.
 - d. LC swears he does not know why "Jimmy" used the Saratoga Springs, NY.
 - e. LC swears he does not know why "Jimmy" claimed LC was a veteran of the United States Armed Forces.

The Respondent states that this misrepresentation is material and caused the Respondent to rely on representation when it issued a policy of insurance and that the Assignor actually lives in Jamaica, NY with the policyholder and NOT Saratoga Springs, NY, it would not have issued the policy at the rate charged of \$1335.91 for Auburn, NY, but at \$3558.85 for Far Rockaway, NY, if LC was a Veteran, but he is not, so NO policy would have been issued for that is a condition precedent to qualifying for coverage with the Respondent insurance carrier.

Section 313 of the Vehicle and Traffic Law does not permit an insurer to cancel an automobile insurance policy retroactively based on fraud or misrepresentation. See **Liberty Mut. Ins. Co. v Mc Clellan**, 127 A.D.2d 767, 769, 512 N.Y.S.2d 161 (1987). However, an insurer may raise the issue of material misrepresentation or fraud as an affirmative defense in an action to recover No-Fault benefits under the policy. See **Matter of Insurance Co. of N. America v. Kaplun**, 274 A.D. 2d 293, 298-299, 713 N.Y.S.2d 214 (2000).

To be entitled to bar recovery, an insurer must establish that an applicant obtained the subject insurance policy by making "material misrepresentations" on the insurance policy application. See Insurance Law § 3105 (b). A misrepresentation is deemed "material" if knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract at the rate offered. In addition, the insurance carrier must demonstrate that the applicant was acting with "a willful intent to defraud", rather than having made a "mere mistake or oversight" when filling out the application. See **Sun Ins. Co. v Hercules Sec. Unlimited**, 195 A.D.2d 24, 30, 605 N.Y.S.2d 767 (2d Dept. 1993).

The defense of fraudulent procurement of an insurance policy, which is non-waivable and hence exempt from the 30-day preclusion rule, **Matter of Metro Med. Diagnostics v. Eagle Ins. Co.**, 293 A.D.2d 751, 752 (2d Dept. 2002), may be asserted against medical providers seeking to recover assigned No-Fault benefits. **A.B. Medical Services PLLC v. Commercial Mutual Ins. Co.**, 12 Misc.3d 8, 820 N.Y.S.2d 378 (App. Term 2nd & 11th Dists. 2006) and would, if substantiated, constitute a complete defense to the action, **Matter of GEICO v. Shaulskaya**, 203 A.D.2d 522 (2d Dept. 2003).

An insurer asserting the defense "has the burden to come forward with proof in admissible form to establish 'the fact' or the evidentiary 'found(ation for its) belief'" that there is no coverage. See **Mount Sinai Hosp. v. Triboro Coach**, 263 A.D.2d 11, 19-20 (2d Dept 1999), quoting **Central Gen. Hosp. v. Chubb Group of Ins. Cos.**, 90 N.Y.2d at 199. See also **Hospital for Joint Diseases v. Hertz Corp.**, 9 A.D.3d 392, 392 (2d Dept 2004); **St. Luke's Roosevelt Hosp. v. Allstate Ins.Co.**, 303 A.D.2d 743, 744 (2d Dept 2003). An insurer's "founded belief" cannot be based upon "unsubstantiated hypotheses and suppositions", **A.B. Med. Services PLLC v. Eagle Ins. Co.**, 3 Misc.3d 8, 9 (App Term 2d Dept 2003); **Amstel Chiropractic P.C. v. Oni Indemnity Co.**, 2 Misc. 3d 129 (A), 2004 NY Slip Op 50088 (U) (App Term 2d & 11th Jud Dists), and must be established by a preponderance of the evidence, **V.S. Med. Servs., P.C. v. Allstate Ins. Co.**, 25 Misc.3d 39, 2009 NY Slip Op 29310 (App Term 2d Dept. 2009).

After careful consideration, I find that Respondent established by a preponderance of credible evidence a "founded belief" that the instant loss involved fraud and misrepresentation in the procurement of the insurance policy. See **State Farm Mut. Auto. Ins. Co. v. Laguerre**, 305 A.D.2d 490, 491 (2d Dept. 2003); **Metro Medical Diagnostics P.C. v. Eagle Ins. Co.**, 293 A.D.2d 751, 751-2 (2d Dept. 2002).

Based on the evidence, I find that the Policyholders' misrepresentation that withheld the information that the Assignor actually garaged the insured vehicle in Jamaica, NY and NOT in Saratoga Springs, NY is a material misrepresentation, as well as never being a member of the United States Armed Forces. I find the evidence offered by the Respondent was sufficient to establish that the policy was procured through misrepresentation and Respondent was justified in denying the claim. The Respondent's position is persuasive in this case and the denials are sustained.

This claim is therefore denied.

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 Suffolk

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

09/20/2024
(Dated)

Matthew J. Cavalier

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:
2c9a7f9d364e181e887182535d1d3842

Electronically Signed

Your name: Matthew J. Cavalier
Signed on: 09/20/2024