

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

James Avellini Medical PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1293-7221
Applicant's File No.	DK23-327382
Insurer's Claim File No.	0668742210000008
NAIC No.	22063

ARBITRATION AWARD

I, Keith Tola, 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: EIP

1. Hearing(s) held on 09/30/2024
Declared closed by the arbitrator on 09/30/2024

Jennifer Raheb, Esdq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Sheila Pugliese, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,603.83**, 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 stems from a New York motor vehicle accident which occurred on July 8, 2022, wherein the EIP allegedly sustained injuries. Applicant seeks compensation for an EMG consult, and EMG/NCS studies, on November 21, 2022. Respondent denied on the ground the provider failed to appear for scheduled Examinations Under Oath.

4. Findings, Conclusions, and Basis Therefor

This Award was issued upon consideration of the parties' arguments and upon review of the relevant evidence contained within the ADR Center files.

Respondent provided copies of the EUO scheduling letters, dated January 27, 2023 and February 21, 2023. The EUOs were to be conducted on February 14, 2023 and March 10, 2023, respectively. Respondent provided proof of mailing the EUO scheduling letters, in the form of a mailing affidavit from Adam Akiwowa, Claims Supervisor. Mr. Akiwowa discussed the respondent's mailing custom and practice, and affirmed the EUO scheduling letters were mailed in accordance therewith. Respondent also provided an affidavit from Ryan Goldberg, Esq., of the law firm who was retained by respondent to question the provider at the EUO. Mr. Goldberg confirmed the provided failed to appear as scheduled.

At the hearing, counsel for applicant took issue with the mailing affidavit of Mr. Akiwowa, noting it was not prepared contemporaneous with the scheduling letters and/or dates the EUOs were to be conducted. I respectfully disagree with counsel and note that Mr. Akiwowa affirmed the basis of his knowledge was by virtue of his review of the relevant files. I also note, applicant has not expressly claimed it did NOT receive the EUO scheduling letters.

I find, Respondent has substantiated its "no show" defense. Consequently, this claim is 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 Nassau

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

09/30/2024
(Dated)

Keith Tola

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:
ad806c22aba6816637ee1905d30973a3

Electronically Signed

Your name: Keith Tola
Signed on: 09/30/2024