

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Jongwhan Cha, LAC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No.	17-24-1345-3219
Applicant's File No.	NF-28046-1430125
Insurer's Claim File No.	32-46Q7-30B
NAIC No.	25178

ARBITRATION AWARD

I, Ioannis Gloumis, 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

Malgorzata Rafalko, Esq. from Sanders Grossman Aronova PLLC participated virtually for the Applicant

Shelly Heffez, Esq. from Abrams, Cohen & Associates, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$45.93**, 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 seeks reimbursement of charges for acupuncture services that were performed on June 7, 2023, following a January 25, 2023 motor vehicle accident. Respondent defends the claim in dispute based upon the defense that the EIP is eligible for Workers' Compensation coverage because the EIP was injured while she was in the course of employment.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments that were presented by the parties during the arbitration hearing and the documentary evidence that has been submitted by the parties. There were no witnesses that appeared and testified during the arbitration hearing.

The EIP, then a 24-year-old female pedestrian, was injured in a motor vehicle accident on January 25, 2023. Following the accident, the EIP sought private medical attention for multiple injuries. Applicant performed acupuncture services on June 7, 2023.

Applicant billed Respondent \$45.93 for the acupuncture services that were performed on June 7, 2023. The evidence shows that Respondent received Applicant's bill for the claim in dispute on June 19, 2023. Thus, Applicant has established its prima facie case. See *Amaze Med. Supply Inc. v. Allstate Ins. Co.*, 3 Misc.3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc 3d 767 (Civ Ct, NY County 2004).

Moreover, Respondent timely denied the claim in dispute on July 10, 2023 based upon the defense that the EIP is eligible for Workers' Compensation coverage because the EIP was injured while she was in the course of employment.

Respondent presented EIP's New York Application for Personal Injury Protection Benefits (the "NF-2 No-Fault Application"), an ISO Report, and the claim specific denial. In section 16 of the NF-2 No-Fault Application, the EIP indicated that she was in the course of her employment at the time of the motor vehicle accident on January 25, 2023. Moreover, the EIP stated that she was employed by Medline Industries Inc. as a Warehouse Operator as of February 14, 2022. The ISO Search Report submitted by Respondent demonstrates that the EIP has an active claim through Workers' Compensation in relation to the loss at issue and that there is an open Workers' Compensation claim for this date of loss and the EIP with Broadspire Service Inc under claim number 18997993700 under Workers' Compensation and Employer's Liability policy number LDS4065032 issued to Medline Industries Inc.

In *Arvatz v. Empire Mutual Ins. Co.*, 171 A.D.2d 262 (1st Dept. 1991), the Court held the following, in relevant part:

"[W]here the availability of work[ers'] compensation hinges upon the resolution of questions of fact or upon mixed questions of fact and law, the plaintiff may not choose the courts as the forum for the resolution of such questions. The Legislature has placed the responsibility for these determinations with the Work[ers'] Compensation Board and there it must remain." (*O'Rourke v Long*, 41 N.Y.2d 219, 228, supra.) The Board has "primary jurisdiction" to resolve the question of coverage and a "plaintiff has no choice but to litigate this issue before the Board". (*Liss v Trans Auto Sys.*, 68 N.Y.2d 15, 21.)"

However, where the insurer issues a late denial for the No-Fault claim, the insurer is precluded from raising the defense of Workers' Compensation eligibility. *A.B. Medical Services, PLLC v. American Transit Ins. Co.*, 24 Misc.3d 127(A) (App. Term 9th & 10th Dists. June 18, 2009); *Inwood Hill Medical, P.C. v. Metropolitan Property and Casualty Ins. Co.*, 24 Misc.3d 127(A) (App. Term 9th & 10th Dists. June 18, 2009).

Following a complete review of the evidence presented, I find that Applicant's claim should be dismissed without prejudice as there are factual issues that need to be determined regarding whether the EIP was injured while in the course of her employment and whether Workers' Compensation coverage is primary. Respondent timely denied the claim in dispute based upon the defense that the claimant is eligible for Workers' Compensation coverage because the EIP was injured while he was in the course of her employment. There is potential merit to Respondent's defense that the EIP was injured while in the course of his employment at the time of the motor vehicle accident on January 25, 2023 and that Workers' Compensation coverage is primary to warrant a dismissal of this arbitration and a referral to the New York State Workers' Compensation Board. The EIP indicated on the NF-2 No-Fault Application that she was in the course of her employment at the time of the motor vehicle accident on January 25, 2023. The ISO Search Report demonstrates that the EIP has an active claim through Workers' Compensation in relation to the loss at issue and that there is an open Workers' Compensation claim for this date of loss and the EIP with Broadspire Service Inc under claim number 18997993700 under Workers' Compensation and Employer's Liability policy number LDS4065032 issued to Medline Industries Inc. As the evidence presented by Respondent demonstrates that the EIP may have been injured on January 25, 2023 while she was in the course of her employment, Applicant's claim is hereby dismissed without prejudice.

Accordingly, Applicant's claim is hereby dismissed without prejudice.

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 DISMISSED without prejudice

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

State of NY

SS :

County of Nassau

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

10/04/2024

(Dated)

Ioannis Gloumis

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:
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Electronically Signed

Your name: Ioannis Gloumis
Signed on: 10/04/2024