

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Comfort Care Services Inc
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-24-1350-0630

Applicant's File No. FDNY24-73762

Insurer's Claim File No. 0551740620002

NAIC No. 36447

ARBITRATION AWARD

I, Anne Malone, 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 10/21/2024
Declared closed by the arbitrator on 10/21/2024

Conor McHugh, Esq. from Fass & D'Agostino, P.C. participated virtually for the
Applicant

Elvira Messina, Esq. from Callinan & Smith LLP participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$3,535.52**, 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

The 29 year old EIP reported involvement in a motor vehicle accident on October 16, 2023; claimed related injury and received rental of a cold compression device, shoulder CPM and cervical traction and provided by the applicant from January 19, 2024 to February 1, 2024.

The applicant submitted a claim for this durable medical equipment (DME), payment of which was initially denied by the respondent based on its finding that benefits are not payable as the EIP failed to comply with the policy terms by failing to appear for two scheduled independent medical examinations (IMEs.)

Subsequently, all claims related to this accident were denied on the grounds that there was no coverage for this claim/loss because the EIP's injuries did not arise from the use and operation of a motor vehicle but was a "staged accident."

The issues to be determined at the hearing are:

Whether the respondent established its coverage defense.

Whether the respondent established that the EIP violated a condition precedent to coverage.

Whether the respondent's denial based on the EIP's failure to appear for an IME can be sustained.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Coverage

The EIP alleged to have been involved in a motor vehicle accident on October 16, 2023. The claim at issue was denied on the grounds that the loss was not an accident and that the injured party did not meet the definition of eligible injured person under the policy, because he was not injured as a result of the use or operation of a motor vehicle.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004).

I find that applicant established its *prima facie* case of entitlement to No-Fault compensation for its claim. The burden then shifts to the respondent to prove that the bill in question was properly denied.

This particular claim was denied on the grounds that the EIP failed to attend two scheduled IMEs.

Subsequently, all claims related to the subject accident were denied on the grounds that this was a "staged accident." A general denial of this claim dated

5/09/2024 states in pertinent part: "Pursuant to Regulation 68.65-1.1 Exclusions, this coverage does not apply to personal injury sustained by : (f) any person who intentionally causes his or her own personal injury. The injured party intentionally caused their injury. Therefore, your claim is denied in its entirety."

Res Judicata- Collateral Estoppel

Res judicata and collateral estoppel are applicable to no-fault arbitration awards and bar relitigation of the same claim or issue. A.B. Medical Services PLLC v New York Central Mutual Fire Ins. Co., 12 Misc.3d 500, 820 N.Y.S.2d 422 (Civ. Ct. Kings Co. 2006), citing Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982.)

A determination of the *res judicata* effect of a prior arbitration proceeding is for the arbitrator in a subsequent arbitration proceeding. City School Dist. Of City of Tonawanda v. Tonawanda Educ. Ass'n., 63 N.Y.S.2d 846, 482 N.Y.S.2d 258 (1984.)

It is well settled that any judgment, even judgments entered on default have *res judicata* or collateral estoppel effect. See Eagle Surgical Supply, Inc. v. AIG Indem. Ins. Co., 40 Misc. 3d 139(A) (App. Term 2013) Further, the Appellate Term has held that "[t]he declaratory judgment is a conclusive final determination, notwithstanding that it was entered on default...." Ava Acupuncture, P.C. v NY Central Mut. Fire Ins. Co., 34 Misc. 3d 149(A) (App. Term 2012.)

At a prior hearing today (AAA case no. 17-24-1344-5280) based on the same parties and issues involved in this claim, I found in favor of the respondent and dismissed the claim with prejudice.

I find that my prior arbitration award is *res judicata* on the coverage issue in this claim. There is no new or different evidence in the record in the case at issue which would lead to a contrary finding and conclusion.

Based on the foregoing, the respondent has established that the applicant is not entitled to reimbursement for the claim at issue.

Under these circumstances, the issue of the EIP's failure to attend IMEs is moot.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before 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 CT

SS :

County of Fairfield

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

10/22/2024
(Dated)

Anne Malone

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:
de683aeac089dc8f485e2b1510c2c8b4

Electronically Signed

Your name: Anne Malone
Signed on: 10/22/2024