

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Venkatesan Sivaraman DBA Main Street  
Physical Therapy  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

|                          |                 |
|--------------------------|-----------------|
| AAA Case No.             | 17-24-1345-0215 |
| Applicant's File No.     | 24-003124       |
| Insurer's Claim File No. | 32-K383-3J4     |
| NAIC No.                 | 25178           |

**ARBITRATION AWARD**

I, Teresa Girolamo, Esq., 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: F.R.

1. Hearing(s) held on 10/29/2024  
Declared closed by the arbitrator on 10/29/2024

Christopher Milazzo, Esq. from The Licatesi Law Group, LLP 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, **\$1,436.04**, 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

Whether Applicant is entitled to \$124.74 for date of service of 2/20/2024 as same was denied based upon the IME of Ajendra Sohol, M.D.?

Whether the Doctrine of Collateral Estoppel applies with the balance of Applicant's claim herein as the services were timely denied based upon the IME report of Independent Medical Examination by Pierce Ferriter, M.D. dated 5/15/2023 with an effective cut off of 6/27/2023?

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

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing. This decision is based on my review of that file, as well as the arguments of the parties at the hearing. Each of the parties appeared via ZOOM.

##### **Legal Analysis:**

"Under the doctrine of Collateral Estoppel, a party is precluded from relitigating an issue which has been previously decided against it in a prior proceeding where it had a full and fair opportunity to litigate the issue (see *D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659 [1990]). 'The two elements that must be satisfied to invoke the doctrine of estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue (see *Kaufman v. Lilly Co.*[65 N.Y.2d 449, 455 (1985)])' (*Luscher v. Arrua*, 21 AD3d 1005, 1007 [2005]). 'The burden is on the party attempting to defeat the application of collateral estoppel to establish the absence of a full and fair opportunity to litigate' (*D'Arata*, 76 N.Y.2d at 664; see also *Kaufman*, 65 N.Y.2d at 456)." *Uptodate Medical Service, P.C. v. State Farm Mutual Automobile Ins. Co.*, 22 Misc.3d 128(A), 880 N.Y.S.2d 227 (Table), 2009 N.Y. Slip Op. 50046(U) at 2, 2009 WL 78376 (App. Term 2d & 11th Dists. Jan. 9, 2009).

##### **Prior Linked Award:**

On 3/6/2024 the matter of AAA 17-23-1317-3825 Venkatesan Sivaraman, DBA/ Main Street PT/ F.R. v State Farm came before me. In that matter as herein one of the issues was whether or not Respondent was able to establish its affirmative defense based upon the IME report of Pierce Ferriter, M.D. dated 5/15/2023. In that case I noted the following:

##### **Facts:**

*On 5/29/2022 F.R. a/k/a F.R.D. was involved in a motor vehicle accident. According to the police report, the accident indicated is a 2 vehicle accident. F.R. is not listed on the police report as being involved.*

*According to the NF-2 dated 7/15/2022 F.R.D. was involved in the accident. AT the time of the accident he was a passenger in a 2020 Jeep Vehicle. F.R.D. lists injuries as "multiple injuries, full extent currently unknown."*

*Following the accident, F.R.D., do to injuries to her neck, mid back and right shoulder, F.R.D. began a course of care that included but not limited to physical therapy and acupuncture treatment. On 5/15/2023 F.R. presented to Pierce Ferriter, M.D., for an Independent Orthopedic Examination.*

**IME Pierce Ferriter, M.D. dated 5/15/2023**

*At the time of the IME F.R.D. presented with complaints of neck pain, mid back pain, and right shoulder pain.*

*For the physical examination for the cervical spine examination, there was no swelling, discoloration or deformity. There were no muscle spasms upon palpation of the paracervical muscles. There was no complaint of tenderness upon palpation. Ranges of motion were normal as were all orthopedic testing. The neurological examination was normal.*

*For the Thoracic and Lumbar spine examinations, same were also completely normal. All orthopedic examinations were normal. For the right shoulder examination, the left shoulder examination, the right and left elbow, the right wrist, the right hand, the left wrist and left hand, as well as the bilateral hips, the right and left knees; the right ankle, the right foot, the left ankle, the left foot examination, all aspects of the examination were completely normal.*

*As such, it was the opinion of Pierce Ferriter, M.D., opined that the cervical, thoracic sprains and strains, as well as the right and left shoulder injuries were resolved.*

*Based upon the examination Pierce Ferriter, M.D., opined that the there is no medical necessity for any further treatment, prescriptions, injections, medications, massage therapy, surgery, diagnostic tests, household help, DME or special transportation. It was based upon this report that Respondent issued a Global Denial of Benefits.*

**Decision:**

*Based upon a preview of the evidence herein and having considered the arguments of the parties I find that Respondent has established its affirmative defense of lack of medical necessity. I further find that Applicant is unable to rebut same. Therefore Applicant's claims are denied.*

**Current Arbitration:**

In this case all dates of service but for date of service of 2/20/2024 were denied based upon the IME of Pierce Ferriter, M.D. As such, based upon the Doctrine of Collateral Estoppel, I find that Applicant had a prior opportunity to challenge Respondent's defense and was unable to do so. As such, I chose to apply the Doctrine of Collateral Estoppel. Therefore all dates of service denied by the IME of Pierce Ferriter, M.D. are hereby denied.

With respect to the date of service of 2/20/2024 in the amount of \$124.74 Applicant's claim is granted as Respondent failed to upload a copy of the IME report of Ajendra Sohol, M.D.

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            |
|---------|---|---------------------|--------------|-------------------|
|         | Venkatesan Sivaraman DBA Main Street Physical Therapy | 02/20/24 - 02/20/24 | \$124.74     | Awarded: \$124.74 |
|         | Venkatesan Sivaraman DBA Main Street Physical Therapy | 02/22/24 - 02/22/24 | \$124.74     | Denied            |
|         | Venkatesan Sivaraman DBA Main Street Physical Therapy | 02/29/24 - 02/29/24 | \$124.74     | Denied            |
|         | Venkatesan Sivaraman DBA Main Street Physical Therapy | 03/05/24 - 03/05/24 | \$124.74     | Denied            |
|         | Venkatesan Sivaraman DBA Main Street Physical Therapy | 03/12/24 - 03/12/24 | \$124.74     | Denied            |
|         | Venkatesan Sivaraman DBA Main Street Physical Therapy | 03/14/24 - 03/14/24 | \$124.74     | Denied            |
|         | Venkatesan Sivaraman DBA Main Street Physical Therapy | 03/19/24 - 03/19/24 | \$114.60     | Denied            |
|         | Venkatesan Sivaraman DBA Main                         | 03/21/24 -          | \$114.60     | Denied            |

|              |  |                            |                   |                          |
|--------------|--|----------------------------|-------------------|--------------------------|
|              | <b>Street Physical Therapy</b>                               | <b>03/21/24</b>            |                   |                          |
|              | <b>Venkatesan Sivaraman DBA Main Street Physical Therapy</b> | <b>03/26/24 - 03/26/24</b> | <b>\$114.60</b>   | <b>Denied</b>            |
|              | <b>Venkatesan Sivaraman DBA Main Street Physical Therapy</b> | <b>03/28/24 - 03/28/24</b> | <b>\$114.60</b>   | <b>Denied</b>            |
|              | <b>Venkatesan Sivaraman DBA Main Street Physical Therapy</b> | <b>04/02/24 - 04/02/24</b> | <b>\$114.60</b>   | <b>Denied</b>            |
|              | <b>Venkatesan Sivaraman DBA Main Street Physical Therapy</b> | <b>04/04/24 - 04/04/24</b> | <b>\$114.60</b>   | <b>Denied</b>            |
| <b>Total</b> |  |                            | <b>\$1,436.04</b> | <b>Awarded: \$124.74</b> |

B. The insurer shall also compute and pay the applicant interest set forth below. 04/22/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is payable from 4/22/2024 to date of payment.

#### C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Respondent is directed to pay attorney fees in accordance with No Fault Regulations.

- 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 CT

SS :

County of Fairfield

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

10/29/2024  
(Dated)

Teresa Girolamo, Esq.

#### **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:**  
28b36910e33eed8829dc1d23632652a4

### Electronically Signed

Your name: Teresa Girolamo, Esq.  
Signed on: 10/29/2024