

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Eclipse Medical Imaging PC
(Applicant)

- and -

New York Central Mutual Fire Insurance
Company
(Respondent)

AAA Case No. 17-24-1346-9120

Applicant's File No. AR24-24297

Insurer's Claim File No. 20233001793

NAIC No. 14834

ARBITRATION AWARD

I, Michelle Entin, 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 10/01/2024
Declared closed by the arbitrator on 10/01/2024

Alek Beynenson, Esq., from The Beynenson Law Firm, PC participated virtually for the Applicant

Joe Schwarzengerg, Esq., from McDonnell Adels & Klestzick, PLLC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,657.99**, 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 reimbursement of \$2657.99 for medical services/diagnostic testing, provided to the injured party/Assignor, a 57 year old male, from April 11, 2023, through April 19, 2023, in connection with injuries sustained by the Assignor in an automobile accident which occurred on March 23, 2023.

Respondent has denied this claim based upon the failure of the Assignor to appear for Examinations Under Oath. Respondent also issued denials based upon material misrepresentation.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the written submissions and oral arguments of the parties.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. NYCRR 65-4.5 (o) (1) (Regulation 68-D).

I have reviewed the relevant documents submitted to the Electronic Case Folder as of the date of this hearing and for the reasons as set forth below I find that Applicant is not entitled to reimbursement for the medical services at issue.

Assignor, a 57 year old male, was involved in an automobile accident on March 23, 2023. Applicant herein seeks reimbursement for MRI's conducted on April 11, 2023 and April 19, 2023.

Applicant has established a prima facie showing of entitlement to reimbursement by submitting evidentiary proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits were overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, (2d Dept., 2004); *Amaze Medical Supply v. Eagle Insurance*, 2 Misc.3d 128 A, 784 NYS2d 918, 2003 N.Y. Slip Op. 51701U (App Term. 2d & 11th Jud Dists). The burden then shifts to the Respondent to demonstrate lack of medical necessity for the services at issue. See *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc 3d 1025 A (2005).

Respondent's initial denial was based upon the failure to appear for Examinations Under Oath. Respondent also issued a denial based upon its investigation which revealed materially misrepresentation in the facts and circumstances surrounding the accident. Respondent contends that it has a founded belief that the alleged covered incident was staged or planned.

In support of this defense, Respondent submits the affidavit of Carl F. Johantgen, SIU investigator employed by Respondent. The affidavit notes that the collision was referred to SIU based upon red flags, indicia of fraud which included:

- policy inception within 19 days of loss;
- provider sent in the police report;
- no insured contact;
- sideswipe collision;
- four occupants in vehicle,

-neither vehicle towed, minor propriety damage;

-ISO claims search indicating that insured driver had prior 7/19/22 accident, and that passenger "AU", had prior 7/31/21 accident, and that insured vehicle previously used in an accident on 2/28/22, wherein prior accident investigated for possible fraud.

Respondent also submits the police report of the incident, and in the linked matters, has submitted copies of the EUO transcripts of the driver and passengers in the subject vehicle.

An insurer asserting a lack of coverage based upon a defense of fraud must come forward with "the facts" or a "foundation for its belief" that the incident was a deliberate, staged event in furtherance of a scheme. See *Mount Sinai Hosp. v. Triboro Coach*, 263 A.D. 2d 11, 699 NYS 2d 77 (2nd Dept., 1999), citing *Central General Hospital v. Chubb Group of Ins., Co.'s*, 90 NY 2d 195, 199, 681 NE 2d 413, 659 NYS 2d 246. 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); and must be established by a preponderance of the evidence. *V.S. Medical Services, P.C., v. Allstate*, 25 Misc. 3d 39, 889 NYS 2d 360, (App Term 2nd Dept., 2009).

Further, in determining the standard of proof required for an insurer to establish that it had a founded standard of proof required for an insurer to establish that it had a founded belief that the Injured Party's injuries did not arise out of a covered accident, the courts have determined that material discrepancies in EUO testimony may be taken into account in determining whether an insurer has come forward with evidence that a collision was staged. *V.S. Medical Services, P.C. v. Allstate Ins. Co. supra*. See also *Manhattan Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co.* 20 Misc. 3d 1144 (A), 2008 WL 4200317 (Table, Text in WESTLAW), Unreported Disposition, 2008 N.Y. Slip Op. 51844 (U) (N.Y. City Civ. Ct., September 04, 2008).

"A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident." *State Farm Mut. Auto. Ins. Co. v. Laguerre*, 305 A.D.2d 490 (App. Div. 2d Dept. 2003). Further, an insurance carrier is not precluded from raising a "staged loss" defense at any time. See *Central General Hospital v. Chubb Group of Ins. Co.'s*, 90 N.Y.2d 195 (1997).

In *American States Ins. Co. v Casado*, 2011 NY Slip Op 31322(U) (N.Y. Sup. Ct. 2011), the Supreme Court, Nassau County provided guidance for the factors that indicate indicia of fraud:

Some guidance is offered by the trial courts, which have articulated several factors as indicia of fraud, including: (i) more than one collision within a short time of the policy's inception, (ii) cancellation of the policy shortly thereafter for non-payment of premiums, (iii) similarities among the collisions and interrelationships among the parties, and (iv) inconsistencies in testimony regarding the circumstances of the subject collision and the identities of the individuals involved. Such factors, in various combinations, have been held to constitute a "compelling and persuasive body of circumstantial evidence that the

underlying loss resulted from an intentional collision staged for the purpose of insurance fraud.

Based upon the foregoing and after thoroughly reviewing the evidence submitted, including the transcripts of examinations under oath and police report and SIU affidavit, and decisions in the linked matters where in it was determined that the evidence was sufficient to sustain the founded belief, I find the evidence sufficient to establish Respondent's founded belief and sufficient to establish Respondent's defense. The significant inconsistencies in the testimony along with the SIU affidavit and supporting evidence are found sufficient to sustain Respondent's defense. I note further that Applicant submits no evidence to the contrary to rebut the evidence of Respondent and accordingly, the claim of Applicant is denied.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

DECISION: AWARD IN FAVOR OF RESPONDENT. APPLICANT'S 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, Michelle Entin, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/31/2024
(Dated)

Michelle Entin

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:
2a170ac6f3c7cc106f6dee545152f08b

Electronically Signed

Your name: Michelle Entin
Signed on: 10/31/2024