American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC (Applicant)	AAA Case No.	17-24-1352-2737
	Applicant's File No.	ACT24-180111
- and -	Insurer's Claim File No.	055174062
	NAIC No.	36447
LM General Insurance Company (Respondent)		

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 11/14/2024
   Declared closed by the arbitrator on 11/14/2024

   Robert Bott, Esq. from The Licatesi Law Group, LLP 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, **$2,787.22**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed was amended by the applicant to $2,099.80 to conform to the appropriate fee schedule.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   The 48 year old EIP reported involvement in a motor vehicle accident on October 16, 2023; claimed related injury and underwent an office visit and injection with ultrasonic guidance provided by the applicant on April 8, 2024.

The applicant submitted a claim for these medical services, payment of which was initially denied by the respondent based on the EIP's failure to appear for an examination under oath and was subsequently 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 respondent also denied payment for these medical services because the EIP failed to comply with the policy terms by failing to appear for two scheduled examinations under oath.

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 EUO 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.

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.

The 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."

The submissions include thousands of pages of documentation to support the respondent's denial including the affirmation of Brian Sweet, a Complex Matters Investigator employed by the respondent in the Special Investigative Unit (SIU) attests to numerous claims investigated as the "Pepsi Ring" which share patterns of organized ring activity.

This claim is one of many claims submitted by various parties involving alleged accidents which involved the same circumstances as the incident at issue here.

The "Sweet" affirmation details 17 separate incidents which occurred from July 19, 2022 to April 22, 2023 and other numerous submissions were presented to establish that the incident at issue here follows the same pattern. There have been numerous arbitration awards in favor of the respondent based on these proofs.

I find that the evidence submitted including the affirmation of Brian Sweet is credible and sufficient to establish that the respondent had a "founded belief" that the incident at issue was intentional and not the result of an accident involving the EIP in this matter. See V.S. Medical Service, PC v Allstate Ins. Co., 11 Misc.3d 334 (Civ. Ct. King Co. 2006) aff'd 25 Misc.3d 39 (App. Term 2d, 11th & 13th Dists. 2009.)

Based on the foregoing, the respondent has established its coverage defense.

Under these circumstances, the no-show EUO issue 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.

11/19/2024
(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:
1124d202faaf4f957d88a18e64419bbb

Electronically Signed

Your name: Anne Malone
Signed on: 11/19/2024