

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ocean Radiology PC
(Applicant)

- and -

Liberty Mutual Fire Insurance Company
(Respondent)

AAA Case No. 17-24-1363-7589

Applicant's File No. n/a

Insurer's Claim File No. AB949546749

NAIC No. 23035

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 02/03/2025
Declared closed by the arbitrator on 02/03/2025

Usman Nawaz, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)
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, **\$725.77**, 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 32 year old EIP reported involvement in a motor vehicle accident on January 16, 2024; claimed related injury and underwent MRI studies of the cervical spine provided by the applicant on April 24, 2024.

The applicant submitted a claim for these medical services, payment of which was denied by the respondent based on a lack of coverage involving intentional material misrepresentations regarding this claim at the EUO of EIP.

The issue to be determined at the hearing is whether the respondent established that the denial is proper based on material misrepresentations

by the EIP regarding his actions before, during and after the subject accident.

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.

This claim was denied based upon the EIP's failure to cooperate with the respondent's investigation and was based on his EUO testimony and failure to provide responses to post-EUO requests for documents/information.

The NF 10 states in pertinent part:

All No-Fault benefits for this claimant are denied. Liberty

Mutual's investigation has revealed false information submitted in support of this claimant's claim revealing misrepresentations of material facts. Per the policy, Fraud "We do not provide coverage for any insured ("insured") who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss ("loss") or damage for which coverage is sought under this policy". Accordingly, the claim is denied in its entirety.

This claim was denied based upon the respondent's investigation of the subject incident, including a review of statements by the EIP made in support of the claim, the police report, witness statements, Medical reports.

This claim essentially involves a coverage issue based on late notice of claim.

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 several prior hearings, including a hearing earlier today (AAA case no.17-24-1359-6607) involving the same parties, I found in favor of the respondent on the same coverage issue involved in the instant matter.

I find that my prior arbitration award is *res judicata* on the determination that the EIP did not provide timely documentation to establish entitlement for no-fault benefits from the respondent for the claim at issue. There is no evidence in the record in the case at issue which would lead to a contrary finding and conclusion.

Under these circumstances, the respondent has established its coverage defense and the applicant is not entitled to reimbursement for the claim at issue.

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.

02/04/2025
(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:
2dade9ee8a94e72284f07a041ea99904

Electronically Signed

Your name: Anne Malone
Signed on: 02/04/2025