

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Summer Physical Therapy PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1362-8056
Applicant's File No.	NA
Insurer's Claim File No.	0368051710101049
NAIC No.	22063

ARBITRATION AWARD

I, Christopher Persad, 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 A.H.

1. Hearing(s) held on 02/19/2025
Declared closed by the arbitrator on 02/19/2025

Rajesh Barua, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Heather Pliszak, C.R. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$267.96**, 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 Applicant appeared via ZOOM by Video.

The Respondent appeared via ZOOM by Video.

Was the applicant entitled to reimbursement for services provided to the EIP A.H. (Thirty-Five-year-old Male) relative to a February 2, 2024, motor vehicle accident (MVA)?

The Applicant seeks payment for the services (*Hot Cold Packs/ Therapeutic Massage/ Chiropractic Massage Therapy/ Trigger Point Therapy/ Electrical Stimulation*) provided to the EIP from April 26, 2024 - April 27, 2024.

The Respondent alleges that AAA has no jurisdiction over this claim.

4. Findings, Conclusions, and Basis Therefor

Whether Applicant's claim is barred.

The Respondent argues that the defense raised above has already been decided in prior decisions, under AAA 17-24-1351-3440.

In that matter, Arbitrator Laura Yantsos, Esq. found in favor of the Respondent on the above issue, stating in relevant part:

The Respondent contends that the assignor is not entitled to no-fault benefits under its policy, i.e. that there is no coverage.

The MV104 shows that the assignor is a New Jersey resident, and the accident occurred in New Jersey. The MV104 shows that the assignor was a passenger in a vehicle owned and operated by a New York resident (Vehicle No. 1). The insurance code listed for this owner/operator on the MV-104 is missing.

The other vehicle (Vehicle No. 2) , which was in collision with Vehicle 1, (the vehicle which assignor occupied), was owned and operated by a New Jersey resident, and this vehicle was insured under a a policy issued to the owner/registrant in New Jersey. The Respondent insurer on this claim is the insurer for Vehicle No. 2 on the MV104, when the MV104 shows that the assignor was a passenger in Vehicle No. 1.

As the claim is being made under the New Jersey policy issued to Vehicle No. 2, any dispute regarding whether the assignor is entitled to no-fault benefits under this policy (which he clearly is not), must be decided in a New Jersey forum.

This forum has no jurisdiction to hear this claim on the issue of whether the assignor is entitled to benefits under this policy. .

The claim is dismissed without prejudice.

It is well settled that res judicata and collateral estoppel are applicable to arbitration awards, including those rendered in disputes over no-fault benefits, and will bar re-litigation of the same claim or issue. Collateral estoppel bars a party from litigating again in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity.

See Buechel v. Bain, 97 N.Y.2d. 295, 303 (2001). Two requirements must be met before collateral estoppel can be invoked: (1) There must be an identity of issue, which has necessarily been decided in the prior action and is decisive of the present action; and (2) there must have been a full and fair opportunity to contest the decision now said to be controlling. *Id.* at 303-304, Comprehensive Med. Care of NY v. Hausknecht, 55AD3d 777(2008). The party invoking collateral estoppel has the burden of establishing that the issue litigated is identical to the issue on which preclusion is sought. See Concord Delivery Service, Inc. v. Syosset Props, 19 Misc3d 40 (App Term, 9 & 10 Jud Dists 2008).

It is within an arbitrator's authority to determine the preclusive effect of a prior arbitration. Matter of Falzone v. New York Central Mutual Fire Ins. Co. 15 N.Y.3d 530, 914 N.Y.S.2d 67 (Court of Appeals 2010). It has also been held that "a judgment in one action is conclusive in a later one... when the two causes of action have such measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first..." See Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982); Monroe v. Providence Washington Ins. Co., 126 A.D.2D 929, 511, N.Y.S.2d 449 (3d Dept. 1987).

I find the prior decision to be determinative of the matter at hand and I find no reason to reach a different conclusion.

Accordingly, Applicant's claim is dismissed without prejudice.

The Supreme Court of the State of New York, County of New York in the matter of Country-Wide Ins. Co. v. Sayed Physical Therapy, P.C., 2022 NY Slip Op 31874(U) (Sup. Ct. NY County 2022) stated:

It is not the duty of the arbiter, be it an arbitrator or Court, to parse [through] hundreds of pages of exhibits to make a out a claim or defense for a party (see e.g. Barsella v. City of New York, 82 A.D.2d 747, 748 [1st Dept 1981]); such duty belongs to counsel, as advocate. Failing to elucidate evidence in support of a party's claim is not error of the arbitrator but is rather error of counsel, and such failure does not render an arbitrator's award arbitrary and capricious (see Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.3d 720, 721 [2d 2006]).

The arbitrator must remain objective and impartial. It is unfair for a respondent insurer to place the arbitrator in the role of evidence explorer on its behalf. American Transit Ins. Co. v. Nexray Med. Imaging Inc., 2023 NY Slip Op 50506(U) (Sup. Ct. Kings Count. Maslow J., May 25, 2023)

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

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

02/19/2025
(Dated)

Christopher Persad

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:
2660afec529d5945c439ba3dc81c89f3

Electronically Signed

Your name: Christopher Persad
Signed on: 02/19/2025