

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pain Physicians NY PLLC  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No. 17-24-1364-8872

Applicant's File No. TLD24-1083284

Insurer's Claim File No. 0747240596 2G7

NAIC No. 29688

**ARBITRATION AWARD**

I, Hersh Jakubowitz, 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 03/05/2025  
Declared closed by the arbitrator on 03/05/2025

Kurt Lundgren from Demetrios A. Bothos, Esq. participated virtually for the Applicant

Brian Korman from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$379.36**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated that Applicant had met its prima facie burden of proof, that Respondent's denials were interposed in a timely fashion and the claim amount adheres to the fee schedule.

3. Summary of Issues in Dispute

Applicant seeks reimbursement, along with interest and counsel fees, under the No-Fault Regulations, for the costs associated with EIP consulting Applicant on office visits on March 13, 2024, May 1, 2024 and July 3, 2024

in connection with injuries allegedly sustained by EIP in a motor vehicle accident on February 22, 2024. The payment, for the office visits, was denied wherein Respondent asserts that the subject automobile insurance policy was fraudulently procured. This decision is based upon the written submissions of counsel for the respective parties contained within the electronic case file maintained by the American Arbitration Association as well as oral argument at the hearing conducted on March 5, 2025.

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

##### **History**

The dispute arises from a motor vehicle accident on February 22, 2024, in which the EIP, a 49-year-old female, was involved as a restrained driver wherein she sustained numerous injuries. The EIP consulted Applicant complaining of headaches, radiating neck and back pain and left ankle pain. Examination revealed decreased range of motion, tenderness, muscle spasms and positive orthopedic tests. Applicant seeks reimbursement for March 13, 2024, May 1, 2024 and July 3, 2024 office visits.

##### **Prima Facie**

The Applicant established its prima facie case by proof that the prescribed statutory billing forms had been received and that payment of no-fault benefits was not forthcoming. (See, [New York & Presbyt. Hosp. v. Countrywide Ins. Co.](#), 44 A.D.3d 729 [N.Y. App. Div. 2d Dep't 2007]). Proof of the receipt of the Applicant's billing is implicit, in the timely denial issued by the Respondent. The Respondent's obligation is to now demonstrate the validity of its denial.

##### **Denial**

The Respondent's denial is based upon the Respondent assertion "*All claims for no-fault benefits are denied based on the investigation conducted by Allstate surrounding the subject motor vehicle accident on February 22, 2024 and testimony given by EIP at her Examination Under Oath conducted on July 29, 2024, demonstrating that there was a material misrepresentation in the procurement of the insurance policy*"

## **Analysis**

The defense of fraudulent procurement of an insurance policy, which is not a covered accident and a Respondent is not precluded from asserting this defense despite its untimely denial, Matter of Metro Med. Diagnostics v. Eagle Ins. Co., 293 A.D.2d 751, 752 (2d Dept. 2002).

Insurance Law§3105(b)(1)"No representation shall avoid any Contract of Insurance or defeat recovery there under unless such representation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the fact misrepresented would have led to a refusal by the insured to make such contract."

Respondent timely denied based on the "material representation" on the procurement of the insurance policy.

At the sworn deposition of the EIP on July 25, 2024, the following was testified to:

*That EIP resides at 111-48 Lefferts Blvd. South Ozone Park, NY., where the said vehicle was maintained overnight.*

*That EIP is the owner of the vehicle she was driving during the said motor vehicle accident.*

*That EIP is not the policy holder of said vehicle.*

*The policy holder of said vehicle is George McAdam, her brother-in-law who resides in Staten Island, NY.*

*The last time said vehicle was insured in the name of EIP was in 2020 or 2021.*

At the sworn deposition of George McAdam on June 18, 2024, the following was testified to:

*George McAdam is not the owner of said vehicle but is owned by the EIP.*

*George McAdam is the policy owner of said vehicle and there are no listed drivers on the policy.*

*EIP is the sole driver of said vehicle and said vehicle has never been parked at or near his residence.*

Investigative affidavit authored by Glen Davis, Sr. Product Consultant employed by the Allstate Insurance Company. :

- i. I did find a policy covering the vehicle, a 2020 Mercedes Benz GLS, vehicle identification number 4JGFF5KE0LA131339. This policy number 978 326 425, effective December 30, 2023, to June 30, 2024, was written for George McAdam, at the address of 10 Hardy Place, Staten Island, NY 10308-2262. The policy was written with two (2) vehicles, 1 of those 2 vehicles being a 2020 Mercedes Benz GLS and the premium was rated at \$2,346.92.*
- ii. If the policy had been correctly rated adding EIP with the policy holder, George McAdam, residing at 10 Hardy Place, Staten Island NY, the premium would have been \$3,553.65. This is an increase of \$1,206.73, over the current rate.*
- iii. After reviewing this policy information, it is evident that a material misrepresentation was made in the procurement of the policy. Had Allstate been aware of this misrepresentation at inception of the policy, Allstate would not have issued or renewed at the same rate. I find that the Respondent established by a preponderance of credible evidence that the instant loss involved fraud and misrepresentation in the procurement of the insurance policy.*

The Respondent has provided sufficient evidence that the insured vehicle was garaged at one address wherein the premium for insurance would be significantly greater than the address provided when the policy was procured, which was at an address and location wherein the insurance premium at issue was significantly less.

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

03/08/2025

(Dated)

Hersh Jakubowitz

**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:**  
69926e202f96dacc0997884fa179a0c9

### **Electronically Signed**

Your name: Hersh Jakubowitz  
Signed on: 03/08/2025