American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Western NY MRI LLP (Applicant)	AAA Case No.	17-24-1366-5993
	Applicant's File No.	084-24-BINKO
- and -	Insurer's Claim File No.	IJH6053002
	NAIC No.	38130
St. Paul Travelers Insurance Co. (Respondent)		

ARBITRATION AWARD

I, Brian Bogner, 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 05/30/2025
   Declared closed by the arbitrator on 05/30/2025

   Pasquale Bochiechio, Esq. from Pasquale V. Bochiechio, PC participated virtually for the Applicant

   Tamara LeFranc, Esq. from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,398.00**, 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 eligible injured person (EIP) is a sixty-six year old male driver of a vehicle that was involved in a motor vehicle accident on October 7, 2020. At issue is reimbursement for MRIs performed from October 14, 2020 through November 11, 2023. The Respondent partially reimbursed the Applicant based on a preferred provider organization (PPO) contract.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents uploaded to the ADR Center maintained by the American Arbitration Association. This case was decided based upon the documents uploaded to the ADR Center, the testimony of any witnesses and the oral arguments of the parties' representatives at the hearing.

This matter arises from a motor vehicle accident that occurred on October 7, 2020. It is not clear how the accident occurred. The EIP eventually came under the care of a chiropractor, pain management specialist and orthopedic surgeons.

At issue is reimbursement for MRIs performed from October 14, 2020 through November 11, 2023. The Respondent partially reimbursed the Applicant and denied the remaining amount stating that "the allowance for this service was calculated in accordance with your MagnaCare auto provider contract."

The Respondent bears the burden of coming forward with competent evidentiary proof to support its Fee Schedule defenses. Robert Physical Therapy P.C. v. State Farm Mut. Auto. Ins. Co., 13 Misc.3d 172, 175 (Civ. Ct., Kings Co. 2006). Judicial notice may also be taken of the Workers' Compensation Fee Schedule. Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A) (App. Term, 1st Dept. 2011).

In support of its defense, the Respondent submitted an Agreement between Preferred Choice Management Systems Inc./MagnaCare and Western New York MRI dated February 10, 1999, a letter from MagnaCare to Western New York MRI dated August 26, 2003 advising that the Agreement will be assigned to MagnaCare Administrative Services, LLC, a Network Access Agreement dated October 1, 2010 between Coventry Health Care Workers Compensation, Inc. and MagnaCare Administrative Services, LLC, an Addendum to the Agreement/Provider Participation Agreement between MagnaCare Administrative Services, LLC and Western New York Magnetic Imaging Center dated October 15, 2010, an acknowledgement of an Amended and Restated Provider Participation Agreement from Western New York Magnetic Imaging Center dated February 2, 2013, an Auto Network Sub-Client Implementation Agreement between Coventry Health Care Workers Compensation, Inc. and the Respondent dated February 1, 2017, a notice from Western New York MRI, LLP to Magnacare dated March 15, 2018 regarding the addition of new practice locations, a letter from Brighton Health Plan Solutions to Western New York Magnetic Imaging Center dated July 1, 2019 advising of contract changes and a letter from Western New York MRI, LLP to Brighton Health Plan Solutions/MagnaCare dated August 16, 2023 requesting to be unenrolled from MagnaCare's network.

The Respondent also submitted an Affirmation from Nydia Flores, the Director of Casualty Accounts for Brighton Health Plan Solutions d/b/a MagnaCare Administrative Services, LLC, who stated that Western New York MRI, LLP became a member of the MagnaCare network on February 10, 1999.

In opposition, the Applicant submitted a brief from counsel explaining that the Applicant, Western New York MRI LLP, was created on March 18, 2003. Counsel explained that, in April of 2023, the Applicant purchased a facility at 222 Genesee Street and the right to use the name "WNY MRI" from WNY MRI Enterprises, Inc., a business corporation formed on May 20, 1992. Counsel explained that the 1999 MagnaCare Agreement uploaded by the Respondent predated the formation of the Applicant and was not purchased or acquired from WNY MRI Enterprises. Counsel noted that Paragraph 7.12 of the Agreement addresses Assignment and Delegation and explained that MagnaCare has not produced any evidence to indicate that the Agreement was assigned from WNY MRI Enterprises to WNY MRI LLP. Counsel also noted that Paragraph 7.13.4 states that the Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successor and assigns, and explained that WNY MRI LLP is not a successor to WNY MRI Enterprises, as it continued operating until May 31, 2024. Counsel listed the following problems with the 1999 MagnaCare Agreement:

> 1. It was signed over four years prior to WNY MRI LLP's creation;
> 2. It was signed by Dr. Pordell who has never had any association with WNY MRI LLP;
> 3. The 1999 MagnaCare contract bears a Tax ID not associated with WNY MRI LLP;
> 4. The 1999 MagnaCare contract involves a corporation not a limited liability partnership;
> 5. There is zero evidence of any assignment from Western New York MRI Enterprises, Inc. to WNY MRI LLP;
> 6. WNY MRI LLP is not a successor or assignee in any way of Western New York MRI Enterprises, Inc.; and
> 7. MagnaCare cannot demonstrate any privity of contract between itself and WNY MRI LLP and as such all addendums/amendments are void.

Counsel then cited to caselaw regarding the assignment of a contract and successor entities and explained that MagnaCare has presented no evidence of any assignment and that WNY MRI is not a successor to WNY MRI Enterprises, Inc. Counsel also addressed the communications between the Applicant and MagnaCare subsequent to the Applicant's formation and explained that the person who signed documentation did not have authority to enter into a new PPO agreement on behalf of the Applicant and was never part of WNY MRI Enterprises, Inc. and, therefore, had no authority to amend agreements on their behalf. Counsel also explained that the letter from the Applicant

requesting to be unenrolled from MagnaCare's network is not a concession that there was a valid contract between the Applicant and MagnaCare and was sent in order to stop MagnaCare from applying a non-existent agreement to the Applicant's claims.

The Applicant also submitted an Affidavit from Joseph Serghany, M.D., one of the original founders and current partner with the Applicant. Dr. Serghany explained that the Applicant was formed in March of 2003 and purchased certain physical assets, real estate and naming rights from Western New York MRI Enterprises, Inc. in April of 2003. Dr. Serghany explained how decisions are made by the partners to engage in or enter into PPO agreements. Dr. Serghany addressed the 1999 MagnaCare Agreement and stated that the Applicant did not purchase or take over any PPO agreements from WNY MRI Enterprises, Inc., nor accept the assignment of any PPO agreements from WNY MRI Enterprises, Inc. Dr. Serghany also addressed the Affirmations from Nydia Flores and Steven Kokulak.

The Applicant also uploaded prior arbitration awards from Arbitrators Dandridge-Richburg, Bargnesi and Coppola finding that there is insufficient evidence of the existence of a PPO Agreement between MagnaCare and the Applicant.

After careful consideration of the evidence and the arguments of the parties, I find that the Respondent failed to adequately establish that the claim at issue is subject to a PPO reduction. The 1999 MagnaCare Agreement, relied upon by the Respondent, is between MagnaCare and another entity and predates the formation of the Applicant. There is no evidence that the Applicant acquired this Agreement, that this Agreement was assigned to the Applicant or that the Applicant is a successor to the corporation that entered into the Agreement. Further, the communications and exchange of documents between the Applicant and MagnaCare subsequent to the Applicant's formation do not bind the Applicant to the 1999 MagnaCare Agreement.

The Applicant is awarded the amount claimed.

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 applicant is AWARDED the following:

A.

Medical		**From/To**	**Claim Amount**	**Status**
	Western NY MRI LLP	**10/14/20 - 10/14/20**	**$294.00**	**Awarded: $294.00**
	Western NY MRI LLP	**11/24/20 - 11/24/20**	**$258.00**	**Awarded: $258.00**
	Western NY MRI LLP	**08/26/22 - 08/26/22**	**$294.00**	**Awarded: $294.00**
	Western NY MRI LLP	**10/05/22 - 10/05/22**	**$294.00**	**Awarded: $294.00**
	Western NY MRI LLP	**11/11/23 - 11/11/23**	**$258.00**	**Awarded: $258.00**
Total			**$1,398.00**	**Awarded: $1,398.00**

B. The insurer shall also compute and pay the applicant interest set forth below. 09/24/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Applicant is awarded interest pursuant to the no-fault regulations. *See* 11 NYCRR 65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR 65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." *See* 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue

was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins, Co., 12 N.Y.3d 217 (2009).

Interest shall run from September 24, 2024, the date this proceeding was filed.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

The insurer shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6.

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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

State of NY
SS :
County of Erie

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

06/02/2025
(Dated)

Brian Bogner

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:
932bad73dc34d932fe00920cfd1277e6

Electronically Signed

Your name: Brian Bogner
Signed on: 06/02/2025