American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Western NY MRI LLP (Applicant)	AAA Case No.	17-24-1366-1356
	Applicant's File No.	084-24-HOL
- and -	Insurer's Claim File No.	0649048949
	NAIC No.	17230
Allstate Property and Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Kent Benziger, 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: E.H.

1. Hearing(s) held on 05/12/2025
   Declared closed by the arbitrator on 05/12/2025

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

   Linda Smith, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,354.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant has amended the amount in dispute to $1,133.43 pursuant to the Radiology Ground Rules for multiple diagnostic studies.

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

3. Summary of Issues in Dispute

On November 13, 2021, the Assignor/Eligible Injured Party, a 48-year-old female, was involved in a motor vehicle accident. In dispute is the proper fee schedule for multiple diagnostic studies administered on December 17, 2021, January 14, 2022 and February 7, 2022.

Denial/Partial Payment. The Respondent reimbursed $1,740.00 of the amended amount billed of $3,094.00, leaving $1,133.43. The basis of the partial payment was pursuant to Respondent's contention of a MagnaCare auto provider contract, an affiliate network of the Coventry network .

The Respondent contends that the Applicant's fees are limited by the terms established by a Preferred Provider Organization (PPO) Agreement. The Respondent has submitted an affidavit from Nydia Flores who is employed by Brighton Health Plan Solutions d/b/a MagnaCare Administrative Services. She states the agreement was executed by both parties in 1999, and the Respondent has submitted addendums signed by Donna Forcier who was a "Practice Manager" with Western New York MRI LLC (herein referred to as WNY MRI, LLC. The Respondent has also exchanged a letter dated August 16, 2023 from the CFO of WNY MRI LLC stating that the entity does not want to be enrolled in the PPO.

Contrary to Ms. Flore's affidavit, Applicant contends that WNY MRI LLP did not execute the 1999 contract as this Applicant, a corporate entity, did not come into existence until 2003. Instead, the 1999 contract was executed by a separate entity, WNY MRI Enterprises. Through an affidavit from the founder and partner of WNY MRI LLP, Joseph Serghany states that although WNY MRI LLP purchased some assets and property from WNY MRI Enterprises (which was still in existence in 2024), WNY MRI LLP did not accept the assignment of any PPO or VPN contract from WNY MRI Enterprises. Further, the terms of the agreement prohibit such an assignment and Ms. Forcier, who signed some subsequent addendum documents, was not a principal at WNY MRI LLP and had no authority to bind that entity. In addition, no documents have been submitted in which WNY MRI LLP agreed to be part of the Coventry Network. Applicant relies on the reasoning and analysis of Arbitrator Brian Bogner in Western NY MRI LLP v. State Farm, AAA Case No. 17-24-1365-6336 (May 15, 2025) who found the 1999 Agreement was not assigned to this Applicant and that the Applicant was not a successor to WNY MRI Enterprises that entered into the earlier Agreement.

4. Findings, Conclusions, and Basis Therefor

On November 13, 2021, the Assignor/Eligible Injured Party, a 48-year-old female, was involved in a motor vehicle accident. In dispute is the proper fee schedule for multiple diagnostic studies administered on December 17, 2021, January 14, 2022 and February 7, 2022.

Denial/Partial Payment. The Respondent reimbursed $1,740.00 of the amended amount billed of $3,094.00, leaving $1,133.43. The basis of the partial payment was pursuant to Respondent's contention that the fee scheduled was governed by a MagnaCare auto provider contract, an affiliate network of the Coventry network.

Neither party contests the application of the Radiology Ground Rules. The sole issue is the applicability of the MagnaCare agreement, an affiliate of the Coventry Network.

The Respondent contends that the Applicant's fees are limited by the terms established by a Preferred Provider Organization (PPO) Agreement. The Respondent has submitted an affidavit from Nydia Flores who is employed by Brighton Health Plan Solutions dba MagnaCare Administrative Services. She states that MagnaCare is a healthcare management company that operates a network of participating medical providers whose contracts call upon the providers to accept a specified rate for services. In turn, MagnaCare contracts with Insurance Carriers which all pay for the treatment according to the rate agreed upon by the providers and MagnaCare. She then clarified the contractual relationship between this Carrier and Coventry:

> In this case, ALLSTATE contracted with COVENTRY, a medical bill review company, seeking access to the MagnaCare network of providers. Access to the MagnaCare provider network became effective in 2010 and remains effective. COVENTRY has had a contractual relationship with MagnaCare since July 1, 2013. This agreement allows COVENTRY to offer the services of the MagnaCare PPO to its customers, like the Defendant.

Ms. Flores then states the basis for not producing the actual agreed upon fee schedule between the parties and other relevant provisions:

> …the contract that the Defendant enters with a bill review company is both proprietary and privileged. The failure to provide a copy of this contract should not be a reason to find that no contractual privity existed between the Defendant, MagnaCare and the provider and or that the Defendant was not a valid MagnaCare customer or Payor. The Defendant's contract with a bill review company is likely to contain other data and material relative to services that are not at issue and therefore not relevant. Furthermore, that contract also likely contains a confidentiality clause, which prevents the Defendant from even sharing these terms with MagnaCare or the provider.

…

Western New York MRI LLP has regularly accepted the MagnaCare fee schedule as full payment for group health and workers' compensation customers without asking to review the hundreds of customer contracts we have.

Western New York MRI LLP would not be able to state at the time they signed the agreement that they thought that the terms would not be binding upon both them and the Payors, like the Defendant, which MagnaCare would contract with. In fact, the language in the agreement makes it very clear that the provider agrees to accept the contracted rate regardless of who the Payor may be. Furthermore, the provider agreement also makes it very clear that MagnaCare is not a Payor, which can only lead a Provider to one conclusion, that insurance companies, like the Defendant would be beneficiaries of this agreement.

In this case, Reza Porell,MD, Medical Director who is affiliated with Western New York MRI LLP, submitted an application to MagnaCare, seeking to become a member of the PPO, on or about January 27, 1999. He was presented with an application, which included a contract, a blank w-9 and a questionnaire, seeking the provider's credentials. He completed the questionnaire, singing the signature page of the contract, as well as the W-9, after the completion of the investigation of the provider credentials. This contract was still in effect on the date of service in question. A true and accurate copy of the contract is annexed hereto as an Exhibit.

Western New York MRI LLP withdrew from the MagnaCare network effective November 27, 2023. Western New York MRI LLP was a member of the network for 24 years. A true and accurate copy of the termination request and confirmation letters are annexed hereto as an Exhibit.

Applicant's Contentions. Counsel contends that the PPO Agreement is not binding on this corporate entity and is also not binding on the location where the studies were performed.

Contrary to Ms. Flores' contentions, Applicant states that this particular corporate entity, WNY MRI LLP did not execute the 1999 contract. The contract was executed by WNY MRI Enterprises - which was prior to the existence of WNY MRI LLP. The affidavit of Dr. Joseph Serghany, a founder and partner of WNY MRI LLP states the following:

> After forming our company in March 2003, we purchased certain physical assets, real estate and naming rights from another company in April of 2003. The company we purchased these assets and naming rights from was named Western New York MRI Enterprises, Inc. (hereinafter WNY MRI Enterprises). The assets purchased consisted of the equipment, real property located at 222 Genesee Street as well as the right to use the name ""WNY MRI" from WNY MRI Enterprises.

The Applicant has included its initial NY Department of State corporate filing dated March 18, 2003. Dr. Serghany states that Dr. Reza Pordell who signed the 1999 agreement was never a partner, employee or otherwise affiliated with WNY MRI LLP. The Tax ID numbers of the entities are different. Dr. Serghany further rebuts the Respondent's contentions:

> At no time during theformation of WNY MRI LLP did wepurchase or take over any PPO or VPN contracts from WNY MRI Enterprises. At no time did WNY MRI LLP accept the assignment of any PPO or VPN contract from WNY MRI Enterprises.
> I have been provided a copy of an affirmation by Steven Kokulak, President of Casualty Solutions for MagnaCare. Mr. Kokulak acknowledges that WNY MRI LLP was not formed until March 2003 and acquired the building that was formerly owned by WNY MRI Enterprises. Mr. Kokulak claims, without any supporting evidence, that it is common for a medical practice to acquire not only the physical structure, but any existing contracts the former entity was party to. Mr. Kokulak claims without evidence that WNY MRI LLP acquired the MagnaCare 1999 contract from WNY MRI Enterprises. Once again, this claim is unsupported by any legal citations or any authority whatsoever, including the paperwork the MagnaCare 1999 contract mandates in assignment under paragraph 7.12. MagnaCare would have had to provide written consent to any such assignment from WNY MRI Enterprises to WNY MRI LLP.

Respondent's Additional Contentions. The Respondent has exchanged an Addendum to the original contract with additional provisions. Respondent states the addendum was signed by Donna Forcier on October 15, 2010 who is listed as a Practice Manager at Western New York Magnetic Imaging Center. Earlier on September 2, 2003, Ms. Forcier signed a consent agreement with the heading Agreement between Preferred Choice management Systems and Western NY MRI. The agreement involved assigning

the contract to MagnaCare Administrative Services, LLC. A final letter from Jeffrey Wasiewicz, WNY MRI, LLP , CFO dated August 16, 2023 to MagnaCare states:

> This letter is in reference to Western New York MRI, LLP, Amherst Diagnostic Imaging PC, providing MagnaCare notice they do not want to be enrolled in your Workers' Compensation and No Fault solutions or MagnaCare network. Our contract is currently proves; however Workers' compensation and No Fault carriers have begun to apply a discount citing a contract with MagnaCare. We ask for you to make the necessary changes within your records to remove us from your records.
> The request is tied to Tax ID#74-3079229 and Tax ID#16-1613106 respectively. The Group NPI numbers are as follows:
> Western New York MRI, LLP 1043255854
> Amherst Diagnostic Imaging, PC 1285701953

Through prior cases, The Respondent contends that the documents signed by Ms. Forcier is evidence of assent that WNY MRI LLP was bound by the terms of the original contract - even though she lists the entity as Western New York Magnetic Imaging Center. The Respondent also contends that Mr. Wasiewicz' correspondence is a termination letter acknowledging or assenting to the agreement prior to the 2023 date.

Through his affidavit, Dr. Serghany finds these contentions incorrect:

> Donna Forcier, a former billing manager, did not have the authority from WNY MRI LLP to enter contracts on behalf of WNY MRI LLP. Ms. Forcier was charged to maintain VPN/PPO contracts, voted on and entered into by the partners, however, at no time did she have the authority to enter into new ones.
> In fact, multiple prior staff attempted several times over the years to obtain a copy of the 'agreement' allegedly executed by WNY MRI LLP to apply to MagnaCare. MagnaCare never provided such original agreement and would only supply the later addendums signed by Ms. Forcier. WNY MRI LLP had no way to obtain the original 'agreement' or 'application' other than through MagnaCare directly.
> Mr. Kokulak claims that because WNY MRI LLP's CFO sent a termination notice to MagnaCare in 2023, WNY MRI LLP confirms it was under

> contract. This is untrue. This 'termination letter' was sent at that time under the advice of prior counsel. Sending the 'termination letter' at that time, upon the advice of counsel, was the only means WNY MRI LLP had to force MagnaCare from applying the terms of the non-existent contract upon it.

As a finding of fact, Dr. Serghany's analysis is persuasive. The Applicant was not a party to the original agreement. WNY MRI LLP was not a successor to WNY MRI Enterprises especially as WNY MRI Enterprises continued in operation through 2024. Further, as noted by Arbitrator Mona Bargnesi in Western NY MRI LLP v. St. Paul Travelers, AAA Case No 17-241367-8467 (May 20, 2025) the 1999 original agreement, by its own terms, could not be assigned:

> Applicant further notes that the 1999 Agreement states in ¶7.12:
> Assignment and Delegation: Neither Party to this Agreement may assign its rights or delegate its duties under this Agreement without prior written consent of the other Party, which consent shall not be unreasonably withheld.
> I am constrained to find that Respondent has not provided any documentary evidence of an agreement or assignment between this Applicant and Magnacare.

Secondly Ms. Forcier, who is not a principal of either WNY MRI Enterprises or WNY MRI LLP, had no authority to bind either entity. In Western NY MRI LLP v. Allstate, AAA Case No. 17-24-1368-1432 (May 16, 2025), Arbitrator Mona Bargnesi found the documents signed by Ms. Forcier pertained to the MagnaCare network prior to the addition of Coventry and that the Respondent has not documented any provisions or documents wherein the Applicant agreed to be part of the Coventry Network or where the Applicant agreed prospectively to be included in the Coventry network without any written consent.

This arbitrator concurs with the analysis of Arbitrator Brian Bogner in Western NY MRI LLP v. State Farm, AAA Case No. 17-24-1365-6336 (May 15, 2025)

> 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 2023 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 claims at issue are 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.

This Arbitrator adopts the rationale of Arbitrator Bogner. This Applicant was not a party to this PPO and is not bound by its fee schedule.. Applicant is awarded the remainder of reimbursement pursuant to the Workers' Compensation Fee Schedule.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first

party-benefits, with no minimum fee and a maximum $1,360.00 See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

APPLICANT IS AWARDED REIMBURSEMENT OF $1,133.43, TOGETHER WITH INTEREST AND ATTORNEYS' FEES.

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**	**Amount Amended**	**Status**
	Western NY MRI LLP	**12/17/21 - 12/17/21**	**$103.00**	**$36.36**	**Awarded: $36.36**
	Western NY MRI LLP	**12/17/21 - 12/17/21**	**$294.00**	**$294.00**	**Awarded: $294.00**
	Western NY MRI LLP	**12/17/21 - 12/17/21**	**$92.00**	**$34.89**	**Awarded: $34.89**

	Western NY MRI LLP	**12/17/21 - 12/17/21**	**$55.00**	**$32.79**	**Awarded: $32.79**
	Western NY MRI LLP	**01/14/22 - 01/14/22**	**$294.00**	**$294.00**	**Awarded: $294.00**
	Western NY MRI LLP	**02/07/22 - 02/07/22**	**$258.00**	**$183.39**	**Awarded: $183.39**
	Western NY MRI LLP	**02/07/22 - 02/07/22**	**$258.00**	**$258.00**	**Awarded: $258.00**
Total			**$1,354.00**		**Awarded: $1,133.43**

B. The insurer shall also compute and pay the applicant interest set forth below. 09/20/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum $1,360.00 See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

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 Orange

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

06/03/2025
(Dated)

Kent Benziger

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:
5b7e3684e52a02d563b4ac12672bc8b6

Electronically Signed

Your name: Kent Benziger
Signed on: 06/03/2025