

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Care4U Physical Therapy, P.C.
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-25-1389-0961

Applicant's File No. N/A

Insurer's Claim File No. 0767859119

NAIC No. 19232

ARBITRATION AWARD

I, Andrew Horn, 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: Assignor, eligible injured person, EIP.

1. Hearing(s) held on 09/08/2025
Declared closed by the arbitrator on 09/08/2025

Andrew Bruskin, Esq., from Andrew Bruskin, P.C., participated virtually for the Applicant

Robert Goldstein, Esq., from Law Offices of John Trop, participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$635.77**, 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

In dispute is Applicant Care4U Physical Therapy, P.C.'s claim as the assignee of a 27-year-old male injured as the insured driver of a motor vehicle involved in an accident on August 30, 2024, for reimbursement for treatments by Randy Lomboy, an employee, from September 3, 2024 through September 20, 2024.

Respondent Allstate Fire and Casualty Insurance Company timely denied the claim because material misrepresentations were made by the insured on the Virginia automobile insurance policy application.

Applicant's attorney pointed out that, in a related case, I vacated a denial predicated upon the same ground. As a consequence, he argued that the insurance carrier should be estopped now from relitigating the defense since it had already been raised, considered and rejected in the prior proceeding.

To the extent that Respondent also contended that the fees charged were not in accordance with the applicable fee schedule, it offered no evidence establishing that the charges are excessive.

4. Findings, Conclusions, and Basis Therefor

The equitable doctrine of *collateral estoppel*, or issue preclusion, bars a party from relitigating an issue where "the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the (party) had a full and fair opportunity to litigate the issue in the earlier action." Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 349 (1999). See Buechel v. Bain, 97 N.Y.2d 295, 303 (2001); Laga v. Unitrin Auto & Home Ins. Co., 76 Misc.3d 131(A) (App Term 2d, 11th & 13th Dists. 2022).

The doctrine is applicable to prior arbitration proceedings, including those rendered in disputes over No-Fault benefits, and bars re-litigation of the same claim or issue. See Martin v. Geico Direct Ins., 31 A.D.3d 505, 506 (2d Dept. 2006); Lobel v. Allstate Ins. Co., 269 A.D.2d 502 (2d Dept. 2000).

The party seeking to invoke collateral estoppel has the burden of establishing that the issue actually litigated and determined in the prior action is identical to the issue on which preclusion is sought. Triboro Quality Med. Supply, Inc. v. State Farm Mut. Auto. Ins. Co., 36 Misc.3d 131(A) (App Term 2d, 11th & 13th Dists. 2012).

The party attempting to defeat the application of collateral estoppel has the burden of establishing the absence of a full and fair opportunity to litigate. See Uptodate Med. Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 23 Misc.3d 42, 44 (App Term 2d, 11th & 13th Dists. 2009).

Applicant's attorney argued that Respondent should be barred from relitigating its fraudulent procurement defense in the instant action by the matters of Focal Point Physical Therapy and Allstate Fire & Cas. Ins. Co., AAA Case No. 17-25-1381-4333 (arb. Andrew M. Horn, July 31, 2025), wherein the same defense was raised by the carrier but "conspicuously absent (was) any evidence establishing that it would not have issued the same policy if the correct information had been disclosed in the application," a fatal error according to Interboro v. Fatmir, 89 A.D.3d 933 (2011).

To the extent that Respondent's attorney contended that *collateral estoppel* should not be applied because in the instant case the insurer submitted a statement from Lisa Bonner, a

consultant employed by Allstate, who suggested that, had the injured person applied using his New York address, the cost of the policy would have been \$3,528,80 as opposed to the \$728.87 paid for the Virginia policy, he misapprehends the doctrine whose "specific purpose is to prevent a party from relitigating issues previously decided against them and necessarily forecloses that party from successive opportunities to present new evidence without justification." See Country-Wide Ins. Co. v. Progressive-Hudson Anesthesia LLC, 2021 NY Slip Op 31587(U) (Sup Ct, NY Cty May 7, 2021, Lynn R. Kotler, JSC).

Since the issue as to whether the injured person fraudulently procured the policy was raised and necessarily decided in the prior matter and raised and must be determined now, I find that there is an identity of issue. Nor has Respondent established that it lacked a full and fair opportunity to litigate the issue during the prior proceeding.

Hence I find that the doctrine of *collateral estoppel* is properly invoked and the insurer is precluded from relitigating the issue as to whether the injured person made a material misrepresentation with respect to his residence when applying for the insurance policy.

Accordingly, Respondent's denial predicated upon fraudulent procurement of the policy is vacated and Applicant's claim is granted in its entirety.

This award is in full disposition of all No-Fault benefit claims submitted to 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Care4U Physical Therapy, P.C.	09/03/24 - 09/20/24	\$635.77	Awarded: \$635.77
Total			\$635.77	Awarded: \$635.77

B. The insurer shall also compute and pay the applicant interest set forth below. 02/28/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since Applicant did not file for arbitration within 30 days of receipt of Respondent's denial, the statutory tolling provision applies. Accordingly, the insurer shall pay interest on the claim from February 28, 2025, the date arbitration was initiated, until such time as payment is made.

C. Attorney's Fees

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

The insurer shall pay Applicant an attorney's fee, subject to a maximum fee of \$1,360.00, in accordance with 11 NYCRR 65-4.6(d).

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 Rockland

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

09/29/2025
(Dated)

Andrew Horn

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:
1e702940eccccbeeae573fb57c59239

Electronically Signed

Your name: Andrew Horn
Signed on: 09/29/2025