

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Orchid Street Physical Therapy PC  
(Applicant)

- and -

State Farm Fire & Casualty Company  
(Respondent)

AAA Case No. 17-25-1388-7485

Applicant's File No. N/A

Insurer's Claim File No. 52-62B3-36Q

NAIC No. 25178

### 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 S.A.

1. Hearing(s) held on 10/20/2025  
Declared closed by the arbitrator on 10/20/2025

Mark Yosef, Esq. from Law Offices of Hillary Blumenthal LLC (Union City) participated virtually for the Applicant

Amanda Gazzo, Esq. (Jeffrey Santos Obsevring) from Sarah C. Varghese & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$369.96**, 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 S.A. (Nineteen-year-old Female) relative to a January 18, 2024, motor vehicle accident (MVA)?

The Applicant seeks payment for the services (*Application of Modalities/ Therapeutic Procedures/ Manual Therapy/ Evaluation*) provided to the EIP from November 29, 2024 - December 6, 2024.

The Respondent denied a portion of the claims based upon the results of an Independent Medical Examination (IME) of the claimant by Gary J. Florio, M.D. on May 16, 2024.

The Respondent raised no issues as to Policy Exhaustion at the time of the hearing.

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

##### **Regarding the Respondent's defense**

The defense raised above has already been decided in prior decision, under AAA #17-25-1382-5750.

In that matter, this Arbitrator found in favor of the Respondent on the above issue (IME), stating in relevant part:

*The respondent cut off medical benefits based on the result of an Independent Medical Examination (IME) of the claimant by Gary J. Florio, M.D., on May 16, 2024.*

*The Doctor listed the medical records submitted for review and discussed the EIP's history. The EIP's current complaints were noted to be, "...pain in the neck and left shoulder".*

*The examination revealed reduced ranges of motion (Cervical (with tenderness), Thoracic, and Lumbar Spine; Left Shoulder (with tenderness). The Orthopedic testing was negative. The neurological examination was normal.*

*The diagnosis/impression noted: "Cervical spine sprain/strain, resolved. Lumbar spine sprain/strain, resolved. Left shoulder sprain/strain, resolved."*

*Further, Dr. Florio states:*

*The above limitations in spinal range of motion were observed and measured in response to my direct request for demonstration, however, at other points in the encounter (including transfers and ambulation), the claimant's spinal range of motion and spinal dynamics revealed no evidence of dysfunction or restriction. The demonstrated range of motion deficits were found to be unassociated with objective evidence of pathology including no evidence of spasm or contracture and were*

*related to the claimant's stated subjective concerns regarding the potential provocation of pain. Gentle palpation of the cervical spine resulted in complaints of tenderness; however, there was no objective evidence of pathology to correlate with these complaints including no evidence of muscular or subcutaneous nodularity, increased muscle tone, frank muscle spasm, or bony derangement. The range of motion of the left shoulder was unassociated with objective evidence of pathology, including no evidence of spasm, contracture, or bony derangement. These deficits were related to the claimant's subjective concerns regarding the potential provocation of pain. Gentle palpation of the left shoulder resulted in complaints of tenderness, however, there was no objective evidence of pathology to correlate with these complaints including no evidence of redness, swelling, effusion, increased heat, crepitation, contracture or ligamentous laxity.*

*I find the IME report sets forth an adequate factual basis and medical rationale for the rejection of the disputed claim and thus is sufficient to rebut the presumption of medical necessity attached to it. See East Coast Acupuncture Servs. P.C. v. American Tr. Ins. Co., 2007 NY Slip Op 50213(U) (App. Term 1 Dept., Feb. 8, 2007); st Vladimir Zlatnick, M.D., P.C. v. Travelers Ins. Indemnity Co., 12 Misc. 3d 128A (App. Term 1 Dept. 2006). The Florio IME reveals multiple areas of reduced ranges of motion; however I find Dr. Florio convincing that the claimant's subjective claims did not correlate with the objective evidence.*

#### *Rebuttal*

*The Applicant relies upon the medical records submitted, to rebut the conclusions of the IME. I find that the services in dispute were not medically necessary. The Applicant has not provided sufficient, CONTEMPERANIOUS, FULL examinations which rebut the findings of the IME. Specifically, but not solely limited to, contemporaneous, post-IME, examinations. There was no comprehensive exam of the claimant, contemporaneous to the IME, submitted, to rebut the conclusion of the above noted IME.*

*As such, the Applicant's claim is denied.*

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 find no reason to reach a different conclusion, especially in light of the fact that this matter involves the identical parties.

Therefore, the Applicant's claim is denied.

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 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, 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.

10/20/2025  
(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:**  
f5a5e6147544bb4156210d9c7810f74e

**Electronically Signed**

Your name: Christopher Persad  
Signed on: 10/20/2025