

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Suesserman Chiropractic PC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-25-1414-0465

Applicant's File No. 3146621

Insurer's Claim File No. 698443

NAIC No. Self-Insured

ARBITRATION AWARD

I, Anne Malone, 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 03/24/2026
Declared closed by the arbitrator on 03/24/2026

Robin Grumet, Esq. from Law Offices Of Andrew J Costella Jr., Esq., PC participated virtually for the Applicant

Jeffrey Kadushin, Esq. from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,897.15**, 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 58 year old EIP reported involvement in a motor vehicle accident on March 29, 2023; claimed related injury and underwent office visits, and chiropractic treatment from January 20, 2025 to June 17, 2025.

The applicant submitted a claim for these medical services, payment of the services provided from January 20, 2025 to June 17, 2025, with the exception of dates of service February 13, 2025 and May 29, 2025 were timely denied by the respondent based on the IME of the EIP by Philip Cilio, D.C., L.Ac. which was performed on November 28, 2023 The IME cut-off was effective on December 5, 2023.

The respondent contends that the bills for dates of service February 13, 2025 and May 29, 2025 were not received.

The issues to be determined at the hearing are:

Whether the applicant established its *prima facie* entitlement to New York No Fault benefits for services provided on February 13, 2025 and May 29, 2025.

Whether the respondent established that the medical services provided by the applicant from January 20, 2025 to June 17, 2025, with the exception of February 13, 2025 and May 29, 2025 were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Applicant's *prima facie* entitlement to no fault benefits - dates of service 2/13/2025 and 5/19/2025

It is well settled that an applicant establishes its *prima facie* showing of entitlement to no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits was overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

However, an insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the ground that plaintiff untimely submitted its claim if such defense is not raised in a timely denial of claim. New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001.)

If respondent has preserved such defense in a timely denial of claim, it will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that "late notice will be excused where the applicant can provide a reasonable justification of the failure to give timely notice." 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007.)

In the instant matter, the respondent's denial was timely and it contained the requisite language regarding "reasonable justification."

The applicant did not submit any proof of mailing for the bills for services rendered on February 13, 2025 and May 29, 2025.

Under these circumstances, the applicant did not establish its *prima facie* case of entitlement to no-fault benefits and the respondent has established its late notice defense.

Therefore, the claim for services rendered on February 13, 2025 and May 29 2025 is dismissed with prejudice.

Medical Necessity dates of service 1/20/2025 to 6/17/ 2025 except 2/13/25 and 5/29/25

To support a lack of medical necessity respondent must "set forth a factual basis and medical rationale for the IME doctor's determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

The Civil Courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his/her findings; and 3) the peer review report fails to provide specifics as to the claim at issue; is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the medical services at issue were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Cilio, which was objectively negative and unremarkable.

Res Judicata- Collateral Estoppel

Res judicata and collateral estoppel are applicable to no-fault arbitration awards and bar relitigation of the same claim or issue. A.B. Medical Services PLLC v New York Central Mutual Fire Ins. Co., 12 Misc.3d 500, 820 N.Y.S.2d 422 (Civ. Ct. Kings Co. 2006), citing Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982.)

A determination of the *res judicata* effect of a prior arbitration proceeding is for the arbitrator in a subsequent arbitration proceeding. City School Dist. Of City of Tonawanda v. Tonawanda Educ. Ass'n, 63 N.Y.S.2d 846, 482 N.Y.S.2d 258 (1984.)

It is well settled that any judgment, even judgments entered on default have *res judicata* or collateral estoppel effect. See Eagle Surgical Supply, Inc. v. AIG Indem. Ins. Co., 40 Misc. 3d 139(A) (App. Term 2013) Further, the Appellate Term has held that "[t]he declaratory judgment is a conclusive final determination, notwithstanding that it was entered on default...." Ava Acupuncture, P.C. v NY Central Mut. Fire Ins. Co., 34 Misc. 3d 149(A) (App. Term 2012.)

At prior hearings (AAA case nos. 17-24-1356-3801 and 17-25-1414-0465) based on the same parties and issues involved in the instant matter I found in favor of the respondent on the issue of medical necessity.

I find that my prior arbitration award is *res judicata* on the issue of medical necessity. There is no new or different evidence in the record in the case at issue which would lead to a contrary finding and conclusion.

Under these circumstances, the respondent has established that the medical services provided from January 20, 2025 to June 17, 2025 with the exception of February 13, 2025 and May 29, 2025 were not medically necessary.

Therefore, the claim for dates of service January 20, 2025 to June 17, 2025 with the exception of February 13, 2025 and May 29, 2025 is dismissed with prejudice.

Accordingly, the entire claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before 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 claim is DENIED in its entirety

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

State of CT

SS :

County of Fairfield

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

04/02/2026
(Dated)

Anne Malone

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:
167bf49c998c395b403e14d236a59346

Electronically Signed

Your name: Anne Malone
Signed on: 04/02/2026