

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bialecki Chiropractic PC  
(Applicant)

- and -

United Farm Family Insurance Company  
(Respondent)

AAA Case No. 17-25-1411-7970

Applicant's File No. N/A

Insurer's Claim File No. 31-A-4LF782

NAIC No. 29963

### ARBITRATION AWARD

I, Marianne C. Zack, 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 03/30/2026  
Declared closed by the arbitrator on 03/30/2026

Ian Besso from The Sigalov Firm PLLC participated virtually for the Applicant

Daniel Fuentes from Freiberg, Peck and Kang, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,352.50**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the 8/1/2025 date of commencement of this arbitration.

3. Summary of Issues in Dispute

Assignor ("EIP") a 69-year-old male, was injured in a motor vehicle accident that occurred on 2/17/2023. Following the accident, EIP suffered injuries which resulted in medical treatment. At dispute are invoices in the amount of \$1,352.50 for treatment provided during the period 3/11/2025 through 5/1/2025. Respondent denied

reimbursement of the invoices based on lack of medical necessity, relying on the independent medical examination ("IME") of Dr. Gregory Hnat dated 10/12/2023. Respondent also raises a fee schedule defense.

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

The hearing in this matter was conducted without any witnesses. This award is based upon hearing the oral arguments of the parties, and upon a full review of the documents contained in the electronic case file as of the date of the Award.

##### Collateral Estoppel - Lack of Medical Necessity:

The doctrine of collateral estoppel applies in this instance because my esteemed colleague, Arbitrator Thomas Awad, has previously awarded on the very same issue, involving the same parties. The award under AAA case no.: 17-24-1354-57258 has collateral estoppel effect, as the identical issue, i.e., the sufficiency of Dr. Hnat's IME report dated 10/12/2023, was raised in the previous proceeding. There was a full and fair opportunity to litigate the issue in the prior matter. *Ryan v. New York Tel. Co.*, 62 NY 2d (1984). In that proceeding, Arbitrator Awad found Dr. Hnat's IME successfully rebutted by Applicant's proof and awarded in favor of Applicant.

##### Fee Schedule:

Respondent further contends that Applicant billed in excess of the fee schedule.

It is the insurer's burden to prove that the provider's fees are in excess of the applicable fee schedule. *East Coast Acupuncture, P.C. v. Hereford Ins. Co.*, 51 Misc. 3d 441 (Civ. Ct. Kings County 2016); *Pavlova v. Allstate Ins. Co.*, 2016 NY Slip Op 26123 (Civ. Ct. Kings County 2016). In order to prevail in its fee schedule defense, the insurer must demonstrate by competent evidentiary proof that the provider billed in excess of the applicable fee schedule. *Continental Medical, P.C. v. Travelers Indemnity Co.*, 11 Misc. 3d 145 (A) (App Term 1 Dept. 2006).

If an insurer presents sufficient evidence to substantiate its reduction of a bill pursuant to the Workers' Compensation Medical Fee Schedule, the burden shifts to the medical provider to rebut the carrier's fee schedule interpretation. See, *Natural Acupuncture Health, P.C. v. Praetorian Ins. Co.*, 30 Misc 3d 132A (App Term 1st Dept 2011).

In support of its fee schedule defense, Respondent has uploaded the burden-satisfying affidavit of James Lee, a certified professional coder. In that affidavit, Mr. Lee reviewed the CPT codes billed and provides a detailed explanation as to how the proper fee

schedule was calculated. This affidavit satisfies Respondent's burden of proof, and shifts the burden to Applicant to rebut the Respondent's interpretation.

Applicant has not offered any argument or rebuttal to the fee schedule interpretation.

Thus, Applicant is awarded \$460.10.

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
	<b>Bialecki Chiropractic PC</b>	<b>03/11/25 - 03/12/25</b>	<b>\$878.75</b>	<b>Awarded: \$125.20</b>
	<b>Bialecki Chiropractic PC</b>	<b>03/25/25 - 03/25/25</b>	<b>\$94.75</b>	<b>Awarded: \$66.98</b>
	<b>Bialecki Chiropractic PC</b>	<b>04/01/25 - 04/01/25</b>	<b>\$94.75</b>	<b>Awarded: \$66.98</b>
	<b>Bialecki Chiropractic PC</b>	<b>04/08/25 - 04/08/25</b>	<b>\$94.75</b>	<b>Awarded: \$66.98</b>
	<b>Bialecki Chiropractic PC</b>	<b>04/24/25 - 04/24/25</b>	<b>\$94.75</b>	<b>Awarded: \$66.98</b>
	<b>Bialecki Chiropractic PC</b>	<b>05/01/25 - 05/01/25</b>	<b>\$94.75</b>	<b>Awarded: \$66.98</b>
<b>Total</b>			<b>\$1,352.50</b>	<b>Awarded: \$460.10</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 08/01/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 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).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." Id. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

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

04/21/2026

(Dated)

Marianne C. Zack

**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:**  
11df56b4b171b1a11eee66a563f83518

**Electronically Signed**

Your name: Marianne C. Zack  
Signed on: 04/21/2026