American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Medical Supply of NY Direct Services Corp (Applicant)	AAA Case No.	17-25-1395-6763
	Applicant's File No.	OS-106305
- and -	Insurer's Claim File No.	24-918709821
	NAIC No.	11851
Progressive Casualty Insurance Company (Respondent)		

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: assignor

1. Hearing(s) held on 09/18/2026
   Declared closed by the arbitrator on 09/18/2026

   Inna Vilig, Esq. from Law office of Olga Sklyut, PC participated virtually for the Applicant

   Charles Fishbaum, Esq from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$7,976.19**, 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 35 year old EIP reported involvement in a motor vehicle accident on November 17, 2024; claimed related injury and received various items of durable medical equipment provided by the applicant from December 17, 2024 to February 4, 2025.

   The applicant submitted a claim for this durable medical equipment (DME), payment for which was initially denied by respondent based on its finding that benefits are not payable as the EIP failed to comply with the policy terms by failing to appear for two scheduled independent medical examinations (IMEs.)

All claims regarding this applicant and this EIP were subsequently dismissed based on a prior court order in favor of the respondent.

The issues to be determined at this hearing are:

Whether the respondent established that the claim at issue was properly dismissed based on a prior court order.

Whether the respondent established that the EIP violated a condition precedent to coverage.

Whether the respondent's denial based on the EIP's failure to appear for an IME can be sustained.

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.

The respondent submitted a copy of the order with notice of entry, a motion granted in favor of the defendant in Supreme Court, Nassau County, Index no. 615045/2025 dated July 15, 2025.

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.)

The submissions include a copy of the order Index no. 615045/2025 dated July15, 2025 by Justice Margaret C. Reilly, Supreme Court Nassau County granting the respondent's motion for Declaratory Judgment in its favor against this applicant and EIP on default.

I find that Justice Reilly's prior order is *res judicata* on the coverage issue based on fraud, "decreeing that Plaintiff (Progressive) has "no obligation to pay any present and future no-fault claims against Individual Defendants… pertaining to claims for bodily injury or property damage made by any of the defendants and/or their assignees stemming from the subject July 17, 2024 and November 17, 2024 incidents; nor to provide coverage under the policies Uninsured/Underinsured Motorist Coverage for any claim for alleged bodily injury made by any of the defendants and/or their assignees stemming from the subject July 17, 2024 and November 17, 2024 incidents; together with costs and disbursements, and for such other and further relief as this Court may deem just and proper…."

The order also issued a Declaratory Judgment in favor of Progressive against Individual Defendants, including the applicant and assignor in the instant matter… based upon Defendants' scheme to defraud and/or fraudulently procure a policy of insurance coverage from PROGRESSIVE by knowingly submitting an application for insurance that contained material misrepresentations of fact and false and/or fraudulent statements; that Plaintiff has no contractual duty to defend, nor to provide indemnity coverage, in any action commenced by, or on behalf of, the Defendants and/or their Assignees stemming from the subject incident; nor a duty to indemnify or provide coverage to the Individual Defendants… pertaining to any claim for bodily injury or property damage made by any of the defendants and/or their assignees stemming from the subject July 17, 2024 and November 17, 2024 incidents; nor to provide coverage under the Policies Personal Injury Protection Coverage (PIP) for any claim for no fault benefits made by any of the Provider Defendants and/or their assignees stemming from the subject July 17, 2024 and November 17, 2024 incidents; nor to provide coverage under the Policy's Additional Personal Injury Protection Coverage (APIP) for any claim for No-Fault benefits made by the Defendants and/or their Assignees stemming from the subject July 17, 2024 and November 17, 2024 incidents; nor a duty to indemnify or provide coverage to the Individual Defendants and the Provider Defendants pertaining to any claim for coverage under the Policy's Medical Payments Coverage for any medical claim made by the Defendants and/or their assignees stemming from the subject July 17, 2024 and November 17, 2024 incidents; nor to provide Uninsured/Underinsured Motorist Coverage for any claim for alleged bodily injury made by any of the Defendants and/or their Assignees stemming from the subject July 17, 2024 and November 17, 2024 incident; nor to provide coverage under the Policies Collision Coverage for any claim made by the Defendants and/or their Assignees

stemming from the subject incidents; together with costs and disbursements, and for such other and further relief as this Court may deem just and proper…."

I find that this court order is *res judicata* as to the coverage issue based on fraud before me.

Under these circumstances, the issue of the EIP's failure to appear for an IME is moot.

This decision Justice Reilly was granted on default on July 15, 2025.

Accordingly, the 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 DISMISSED without prejudice

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.

09/19/2026
(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:
664d964a762b9b15d4880825ca237321

Electronically Signed

Your name: Anne Malone
Signed on: 09/19/2026