American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mid-State Anesthesia Consultants (Applicant)	AAA Case No.	17-26-1462-6047
	Applicant's File No.	n/a
- and -	Insurer's Claim File No.	25-727098221
	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: EIP

1. Hearing(s) held on 11/23/2026
   Declared closed by the arbitrator on 11/23/2026

   Anna Goldman, Esq. from Kudman & Goldman, PLLC participated virtually for the Applicant

   Ashley Hansbury from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,555.00**, 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 54 year old EIP reported involvement in a motor vehicle accident on September 11, 2025; claimed related injury and underwent anesthesia services provided by the applicant on April 14, 2026.

   The applicant submitted a claim for these medical services, payment for which was 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.)

   The respondent also asserted a fee schedule defense.

The issues to be determined at the hearing are:

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.

Whether the respondent established its fee schedule defense.

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.

No-Show IME

It is the respondent's burden to prove that the bill in question was properly denied. Under 11 NYCRR 65-1.1, which prescribes the No-Fault Mandatory Personal Injury Protection Endorsement which must be included in all owners polices of motor vehicle liability insurance issued in New York, the "Conditions" section of the endorsement contains a "Proof of Claim" provision (d) which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(d) "the eligible injured person shall submit to medical examination by physicians selected by or acceptable to, the Company when, and as often as, the Company may reasonably require."

Under the regulations claims practice provisions, Section 65-3.5(d) states in pertinent part that: "[a]ll examinations under oath and medical examinations requested by the insurer shall be held at a place and time reasonably convenient to the applicant and medical examinations shall be conducted in a facility properly equipped for the performance of the medical examination. The insurer shall inform the applicant at the time the examination is scheduled that the applicant will be reimbursed for any loss of earnings and reasonable transportation expenses incurred in complying with the request."

The respondent submitted an affidavit by someone with personal knowledge of the business practices and the file for this claim, to establish that the scheduling letters were properly mailed. Also submitted were affidavit from Dr. Hansraj to establish his personal knowledge that the EIP failed to appear for two scheduled independent medical examinations.

The applicant argued that the affidavits from Dr. Hansraj were insufficient to establish that the EIP did not appear for the IMEs on April 27, 2026 and May 28, 2026.

I have reviewed the affirmation from Dr. Hansraj and find them to be sufficient. The affidavits, which are singed on the days of the IME no show, indicate that Dr. Hansraj relied upon his personal knowledge and his review of the records which were maintained in the ordinary course of his business practice. He further states the dates and times of the scheduled IMEs he was at the office and available to conduct the IME.

The respondent submitted copies of letters which were sent to the EIP and her attorney dated March 31, 2026 and April 30, 2026 for IMEs scheduled on April 27, 2026 and May 28, 2026, respectively.

The scheduling letters were proper as to form and there is no evidence submitted to establish that the letters were improper in any way, or that they were sent to an improper address. Based upon the policy violation, a timely denial was issued.

The policy breach in this case was instituted by the EIP. It was his/her failure to appear at the two scheduled independent medical examinations that caused the denial of the claims. The EIP's failure to appear for the examinations breached a condition precedent to coverage. See Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 82 A.D.3d 559, 560 (N.Y. App. Div. 1st Dept. 2011), which held that when an EIP "failed to appear for the requested IMEs, [the insurer] had the right to deny all claims retroactively to the date of loss, regardless of whether the denials were timely issued…A denial premised on breach of a condition precedent to coverage voids the policy ab initio and, in such case, the insurer cannot be precluded from asserting a defense premised on no coverage."

The applicant presented no evidence that the EIP did not receive the letters scheduling the independent medical examinations or to refute the proof that she did not attend the examinations on April 27, 2026 and May 28, 2026.

The applicant also argued that the denial in this matter was insufficient. After a review, I find that the denial and other submissions were sufficient to establish the respondent's defense.

Based upon the proof presented, I find that the respondent established that the EIP violated a condition precedent to coverage and that its denial can be sustained.

Under these circumstances the fee schedule issue is moot.

Accordingly, the claim is dismissed with prejudice.

Any further issues raised 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.

11/24/2026
(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:
21ce369af41d021db595eff4a8823aed

Electronically Signed

Your name: Anne Malone
Signed on: 11/24/2026