
In the Matter of the Arbitration between:

Restorative Chiropractic Solutions, PC / Stanley Loussaint (Applicant)	AAA Case No. 412013003482 AAA Assessment No. 17 991 10823 13 Applicant's File No.
- and -	
Omni Insurance Company (Respondent)	Insurer's Claim File No. 201161093

ARBITRATION AWARD

I, Debbie Kotin Insdorf, Esq., 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

05/13/13

and declared closed by the arbitrator on 5/13/13.

Naomi Cohn participated in person for the Applicant.

Nicole McErlean participated in person for the Respondent.

2. The amount claimed in the Arbitration Request, \$3,627.77, 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

Was there a violation of a policy condition, thus resulting in exclusion from coverage?

4. Findings, Conclusions, and Basis Therefor

Applicant's claim is for \$3,627.77 for an initial visit (2-02-12) and Manipulation Under Anesthesia (MUA) (2-02-12).

The Respondent did not issue a denial. The Attorney for Respondent set forth the Respondent's position in a letter dated 2-07-13 to the American Arbitration Association. He wrote, "Applicant Restorative Chiropractic Solutions is located at 2350 Broadway, Suite 539, New York, New York 10024.

As such this arbitration is required to follow this precedent set forth in *Unitrin v. Bayshore Physical Therapy* 82 A.D.3d 559, 918 NYS2d 473 where the Appellate Division First Department found that the failure to appear for an IME was a condition precedent to coverage and denials timely or not were not needed."

The Respondent submitted a copy of the 7-20-11 notice sent to the Assignor advising him that an Independent Chiropractic/Acupuncture Examination was scheduled for 8-10-11.

The Respondent submitted a copy of the 7-20-11 notice sent to the Assignor advising him that an Independent Orthopedic Examination was scheduled for 8-11-11.

The Respondent submitted a copy of the 8-12-11 notice sent to the Assignor advising him that the Independent Chiropractic/Acupuncture Examination was rescheduled for 8-31-11.

The Respondent submitted a copy of the 8-16-11 notice sent to the Assignor advising him that the Independent Orthopedic Examination was rescheduled for 9-08-11.

11 NYCRR 65-1.1 provides as follows: "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." The appearance of the claimant for an IME at anytime is a condition precedent to the insurer's liability under the policy. An insurer may deny a claim retroactively to the date of loss for a claimant's failure to attend an IME. See, Stephen Fogel Psychological, PC v Progressive Casualty Insurance Co., 35 AD3d 720, 827 N.Y.S. 2d217 (2nd Dept. 2006).

The failure to appear for a physical examination requested by the insurance carrier is a breach of the policy conditions and voids the obligation of the carrier to provide no-fault benefits.

According to the Respondent, the Assignor did not appear on 8-10-11, 8-11-11, 8-31-11 or 9-08-11.

The Applicant's Attorney argues that the notices were defective in that the letters notifying the Assignor were sent to 111 Ralph Avenue, Brooklyn, New York 11236. The AR-1, NF-3 and AOB have the Assignor residing at 111 East 86th Street, Brooklyn, New York 11236.

The Respondent's Attorney did not know why the Respondent sent the notices to the Ralph Avenue address.

An opinion was issued by the State of New York Insurance Dept. on 2-11-03 regarding the failure to attend a No-Fault IME. The Office of General Counsel stated in pertinent part, "When an eligible injured person fails to attend a scheduled examination, it is a question of fact, to be determined under all the specific circumstances of each case, whether the insurer's request was reasonable, and as a corollary, that the injured person's failure to attend was unreasonable, in order to ultimately determine whether the policy condition was met."

I find after reviewing the documents that there has been no violation of a policy condition. There has been no proof the person's failure to attend was unreasonable. It is likely that the Assignor never knew there were appointments scheduled. The Respondent has failed to submit properly addressed Independent Medical Examination letters showing me that the Assignor was notified of two separately scheduled and rescheduled Independent Medical Examinations.

I am awarding Applicant \$3,627.77 for the Manipulation Under Anesthesia. Applicant has made a prima facie case of entitlement to the benefits sought.

Accordingly, Applicant is awarded \$3,627.77.

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.

Accordingly, the applicant is AWARDED the following:

A.

Benefits	Amount Claimed	Amount Awarded
Health Service Benefits	3,627.77	3627.77
Totals:	\$3,627.77	\$3,627.77

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 01/10/2013, which is a relevant date only to the extent set forth below.)

Since the motor vehicle accident occurred after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a).

In accordance with 11 NYCRR 65-3.9(c), interest shall be paid on the claim(s) totaling \$3,627.77 from 01-10-13 the date the arbitration was commenced.

C. Attorney's Fees

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

The Respondent shall also pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6(e). However, for all arbitration requests filed on or after April 5, 2002, 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 New York
SS :
County of New York.

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



(Debbie Kotin Insdorf, Esq.)

6/12/13
(Dated)

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.