

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

(Applicant)	AAA Case No.	17-20-1180-6199
	Applicant's File No.	NA
- and -	Insurer's Claim File No.	0663131090101016
Geico Insurance Company (Respondent)	NAIC No.	35882

### ARBITRATION AWARD

I, Lisa Capruso, 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 02/23/2022  
Declared closed by the arbitrator on 02/23/2022

Jeffrey Datikashvili, Esq. from The Sigalov Firm PLLC participated by telephone for the Applicant

Mr. Jerry Marino from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$548.08**, 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

Applicant seeks reimbursement for durable medical equipment given to the Assignor, a 67-year-old male, on 12/6/19, after an accident of 6/26/19. Respondent denied the claim based on the Assignor's failure to appear for an examination under oath.

4. Findings, Conclusions, and Basis Therefor

Applicant submitted a claim to the Respondent for durable medical equipment given to the Assignor after an automobile accident that occurred on 6/26/19. Assignor, a passenger in the vehicle, alleged injuries to the neck, back, and knees as a result. In

dispute in this arbitration is date of service 12/6/19 for which the Applicant has submitted a bill for a cane and for a hinged knee brace. A no-fault provider establishes its prima facie entitlement to judgment by submitting proper evidentiary proof that it generated and mailed the prescribed statutory billing forms to the insurer, that the insurer received it, and that the no-fault benefits were overdue. Mary Immaculate Hosp. v. Allstate Ins. Co. 5 A.D. 3d 742-43 (2d Dept. 2004).

Respondent denied the claim based on the Assignor's failure to appear for examinations under oath which were scheduled to be held on 8/20/19 and 9/5/19. The appearance at an EUO is a condition precedent to coverage, and a claimant's inaction to an insurer's timely notifications vitiates the claim. Back to Back Chiropractor, P.C. v. State Farm Mut. Ins. Co., 35 Misc. 3d. 1241(A). The Courts have held that where there is a failure to submit to an examination under oath, No Fault benefits can properly be denied retroactively to the date of loss. A.B. Medical Services, P.C. v. American Transit Ins. Co., 25 Misc 3d 128A (2009). In support of the denial, Respondent submitted the scheduling notices as well as affidavits of mailing. Respondent also submitted the EUO transcripts indicating that the Assignor did not appear.

Applicant's attorney argued that the scheduling notices were defective since they contained an incorrect address for this Assignor. The NF-3 form has an address of 251 East 29<sup>th</sup> Street, #1C, Brooklyn, NY 11226. This is also the address on the Assignment of Benefits dated 12/6/19.

Respondent's counsel argued that the scheduling notices were sent to the Assignor at the address noted on the Assignor's NF-2 form. The address on the NF-2 is 531 East 22<sup>nd</sup> St. #6F, Brooklyn, NY 11226. This form is dated 7/10/19 and is signed by the Assignor.

A review of the EUO scheduling letters dated 8/1/19 and 8/21/19, and the affidavits of service show that the letters were sent to this Assignor at a third address which was 522 E. 22<sup>nd</sup> Street, #6F, Brooklyn, NY 11226. Since the scheduling letters were sent to an address which appears to be incorrect, Respondent's denial of claim cannot be upheld.

Accordingly, the Applicant is entitled to reimbursement in the amount of \$548.08 for the claim in dispute.

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
		12/06/19 - 12/06/19	\$548.08	Awarded: \$548.08
<b>Total</b>			<b>\$548.08</b>	<b>Awarded: \$548.08</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 10/02/2020 is the date that interest shall accrue from. This 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 65-3.9c, interest shall be paid on the claims totaling \$548.08 from 10/2/20, 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

Respondent shall pay Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d), i.e., 20 percent of the amount of first party benefits, plus interest thereon with no minimum fee and a maximum fee of \$1360.00. 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, Lisa Capruso, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/23/2022  
(Dated)

Lisa Capruso

#### **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:**  
fbab58dfda232848d49dcfc3f1532d1d

**Electronically Signed**

Your name: Lisa Capruso  
Signed on: 02/23/2022