

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

(Applicant)	AAA Case No.	17-20-1156-7501
- and -	Applicant's File No.	n/a
American Transit Insurance Company (Respondent)	Insurer's Claim File No.	1067317-01
	NAIC No.	16616

ARBITRATION AWARD

I, James Hogan, 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 07/09/2020
Declared closed by the arbitrator on 07/09/2020

Ian Besso from The Sigalov Firm PLLC participated for the Applicant

Helen Cohen from American Transit Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,533.00**, 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 EIP, a 55 year old male, was injured in a collision on 8/20/19. This claim is for lidocaine 5% ointment and a dispensing fee provided to the EIP on 10/16/19 by the Applicant, billed at \$1,533.00. This was a refill for prior prescription from Cathy Delorme-Pagan, MD, dated 8/29/19. Respondent denied the Applicant's claim asserting that the EIP failed to appear for IMEs on 10/31 and 11/20/19.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

Applicant's submission:

Applicant is billing for services provided to the Applicant as follows:

On 10/16/19, the Applicant dispensed lidocaine 5% ointment and also charged a dispensing fee for total of \$1,533.00.

Applicant has provided a copy of the initial prescription from Cathy Delerme-Pagan, MD, dated 8/29/19 which indicates that there are 2 refills.

Applicant has provided a copy of an initial evaluation of the EIP done on 8/29/19 at 406 Medical PC, by Dr. Delerme-Pagan. The EIP advised that he was involved in an MVA on 8/20/19. He was taken to the hospital from the accident scene where he was treated and released. He presented with complaints of pain in the neck, mid back, low back right shoulder and bilateral hips.

After the examination, the initial diagnosis was sprain/strain of the cervical spine, thoracic spine, lumbar spine, sacral spine, right shoulder and bilateral hips. There was also a contusion of the thigh.

The patient was told to have a regimen of physical therapy at the rate of 3 times a week for 4 weeks. This form indicates that the lidocaine ointment was being prescribed in addition to the naproxen and methocarbamol.

Applicant has provided a copy of a delivery receipt for the lidocaine ointment which is signed by the EIP and dated 10/16/19.

Applicant has provided copies of pages describing medications. Applicant has also provided documentation with regard to fees for medications.

Respondent's submission:

The position of the Respondent is that the EIP failed to appear for IMEs on 10/31 and 11/20/19.

Respondent has provided a copy of its NF-10 issued on 12/10/19 denying the Applicant's claim. This form indicates that the Applicant's billing was received on 10/28/19. The file verification was requested on 11/16/19 and received on 11/20/19.

On 11/16/19, Respondent sent a request for additional verification to the Applicant. This document says that in order the process the claim, Respondent needs a letter of

necessity from the referring physician indicating the need for these supplies/prescriptions. This letter carries the 120 day warning.

On 10/16/19, Independent Physical Exam Referrals (Independent) sent a letter to the EIP at 1610 Lincoln Pl., Brooklyn, NY 11233. This letter advises that an IME was scheduled for the EIP with Dr. Michael Russ to take place on 10/31/19 at 3:15 p.m. at 717 Church Ave., Brooklyn, NY.

On 11/1/19, Independent sent another letter to the EIP advising that the IME was now scheduled for 11/20/19 at 2:30 p.m. with Dr. Russ at the same location on Church Avenue.

Respondent has submitted an affidavit from Lynn Hershman, an employee of Independent. This letter advises that she is responsible for drafting, printing and mailing letters for IMEs pursuant to request by the Respondent.

At the request of the Respondent, she mailed a letter to the EIP on 10/16/19. This letter advises that an IME was scheduled with Dr. Russ on 10/31/19 at 3:15 p.m.

She also says that the EIP failed to appear for the IME on 10/31/19 and on 11/1/19 a follow-up letter was sent to him. This follow-up letter advised that the IME was rescheduled and would now take place, with Dr. Russ, on 11/20/19 at 2:30 p.m.

Ms. Hershman says that she personally mailed the IME scheduling letters to the EIP at 1610, Lincoln Pl., Brooklyn, NY 11233 and 1615 Lincoln Pl., Brooklyn, NY 11223.

This affidavit was sworn to on 3/5/2020.

Affirmation by Michael Russ: Dr. Russ has filed an affirmation saying that IMEs were scheduled for the EIP on 10/31/19 and 11/20/19. The IMEs were scheduled by Independent Physical Exam Referrals, Inc.

He then sets forth the standard procedure when a claimant appears for an IME.

He notes that on 10/31 and 11/20/19, the EIP never checked in, never had his file pulled, was never examined and no report was generated. He was present at 717 Church Ave., Brooklyn, NY at 3:15 p.m. on 10/31/19 and on 2:30 p.m. on 11/20/19. He was prepared to conduct the examinations.

On 12/4/19, Respondent issued a global NF-10 denying all claims based upon the assertion that the EIP failed to appear for IMEs with Dr. Russ on 10/31 and 11/20/19. As result, all benefits were denied effective 8/20/19.

At the hearing:

Applicant relied upon its submission.

Respondent relied upon its submission.

FINDINGS:

The Applicant has established its prima facie case.

This claim is for lidocaine 5% ointment and a dispensing fee provided to the EIP on 10/16/19 by the Applicant, billed at \$1,533.00. This was a refill for prior prescription from Cathy Delerme-Pagan, MD, dated 8/29/19.

Respondent denied the Applicant's claim asserting that the EIP failed to appear for IMEs on 10/31 and 11/20/19.

Respondent has provided an affidavit from Lynn Hershman regarding the mailing of the IME scheduling letters. She says that she mailed the letters to the EIP at 2 different addresses, 1610 Lincoln Pl. and 1615 Lincoln Pl., both in Brooklyn New York.

I note that the IME scheduling letter dated 10/16/19 list the EIP's address at 1610 Lincoln Pl.

There is nothing on that letter to indicate that a copy was sent to the EIP at any other location.

The 2nd IME scheduling letter which is dated 11/1/19 is addressed to the EIP as 1615 Lincoln Pl.

Therefore, Respondent is only provided one copy of an IME scheduling letter sent to the EIP at each location.

In her affidavit, Ms. Hershman says that she mailed the notices to the EIP at both addresses but, as noted above, there is only one letter going to each address.

Due to the discrepancy in the affidavit of Ms. Hershman as well as the failure of the Respondent to provide 2 IME schedule letters to each location, I find that the Respondent has not demonstrated that the EIP was properly noticed for IMEs.

The claim is awarded.

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
		10/16/19 - 10/16/19	\$1,533.00	Awarded: \$1,533.00
Total			\$1,533.00	Awarded: \$1,533.00

B. The insurer shall also compute and pay the applicant interest set forth below. 02/13/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

I find that the date for interest to accrue is the date of the filing of the arbitration, 2/13/2020 as this is the date when the Applicant's filing was processed and notice of the arbitration sent to the Respondent. As per Insurance Regulation 65-3.9, interest is due until such amount is paid, and without demand therefor.

C. Attorney's Fees

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

The insurer shall pay the Applicant's attorney as per 11 NYCRR 65-4.6 (e). However, if the award and interest is equal to, or less than, Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon 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 Suffolk

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

07/10/2020
(Dated)

James Hogan

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:
6a1a1e5a3cbcc96a472917d3ec12fa15

Electronically Signed

Your name: James Hogan
Signed on: 07/10/2020