

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

TMVQS Corp d/b/a Trinity Pharmacy
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-20-1167-9188

Applicant's File No. 00066663

Insurer's Claim File No. 9TINV09008-02

NAIC No. 29742

ARBITRATION AWARD

I, Stacey Erdheim, 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: Claimant

1. Hearing(s) held on 10/04/2021
Declared closed by the arbitrator on 10/04/2021

Rachel Drachman from Drachman Katz, LLP participated in person for the Applicant

Usman Nawaz from Law Offices of Moira A. Doherty participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 723.32**, 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

This arbitration arises out of treatment of a Claimant (OA) for injuries sustained in a motor vehicle accident occurring on 9/11/19. Applicant seeks reimbursement for the prescription medication dispensed on 3/4/20 in the amended amount of \$723.32. Respondent issued a timely denial based on fee schedule. Respondent's denial specifically stated No-Fault reimbursement for Somnicin NDC: 50488091601 is denied in its entirety as it is a non-prescription and/or over the counter [OTC] drug/pharmaceutical. New York Insurance Law Section 5102 limits reimbursement under No-Fault to prescription drugs only.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder (ECF) as of the date of the hearing in this matter and have considered all documents contained therein for the purpose of rendering this award. No additional documentation was submitted by either party at the time of the hearing.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. 11 NYCRR 65-4.5(o)(1). (Regulation 68-D.)

This arbitration arises out of treatment of a Claimant (OA) for injuries sustained in a motor vehicle accident occurring on 9/11/19. Applicant seeks reimbursement for the prescription medication dispensed on 3/4/20 in the amended amount of \$723.32. Respondent issued a timely denial based on fee schedule. Respondent's denial specifically stated No-Fault reimbursement for Somnicin NDC: 50488091601 is denied in its entirety as it is a non-prescription and/or over the counter [OTC] drug/pharmaceutical. New York Insurance Law Section 5102 limits reimbursement under No-Fault to prescription drugs only.

It is settled Law that to recover assigned first party No-Fault benefits, a provider establishes a prima facie entitlement to an award by proof of submission of statutory claim forms setting forth the fact and amounts of the losses sustained, and a payment of No-Fault benefits was overdue. (*See Insurance Law 5106 (a)*; *Mary Immaculate Hospital v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Medical Supply, Inc. v. Eagle Ins Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]). Additionally, acknowledgment of receipt of the bill in its denial is proof of submission of the claim. (*See Careplus Med. Supply Inc. v. State-wide Ins. Co.*, 11 Misc 3d 29, 812 NYS2d 736 [App Term, 2nd & 11 Jud Dists 2005]). Applicant has met its burden in the case at hand.

Applicant argues that Respondent has not met its burden with regard to the defense that these charges are not in accordance with the fee schedule. I agree with Applicant. The burden is on the insurer with respect to a defense that the fees charged were in excess of the Workers' Compensation Fee Schedule. (*St. Vincent Medical Services, P.C. v. Geico Ins. Co.*, 29 Misc. 3d 141(A), 2010 NY Slip Op 52153(U) (Sup Ct. App. T. 2d Dep't 2010); also see *Rogy Med. P.C. v. Mercury Cas. Co.*, 23 Misc. 3d 132 (A), 2009 NY Slip Op 50732 (U) (Sup. Ct. App. T. 2d Dep't 2009).

The following informal opinion was issued by the Office of General Counsel on June 11, 2001, representing the position of the New York State Insurance Department. In relevant part: "1. Assuming the following services and/or products are provided to an eligible insured person, are the following items covered by the No-Fault Law, i.e., is an insurer obligated to pay for these services and or products as No-Fault coverage expenses: ... Over the Counter. Conclusion: In order for services to be reimbursable

under No-Fault, such services must be medically necessary health services as enumerated under N. Y. Ins. Law § 5102 (McKinney 2000) and subject to the requirements of No-Fault Regulation 68, N.Y. Comp. Codes R. & Regs. tit. 11 § 65.15 when applicable. With respect to drugs, N.Y. Ins. Law § 5102 (McKinney 2000) limits reimbursement under No-Fault to prescription drugs only. Over-the-counter drugs and products which may be purchased without prescription. [emphasis added]With respect to reimbursement for services which provide health-related products, such items are limited solely to prescription drugs and prosthetic devices which are enumerated under Section 5102(a)(1)(i). With regard to the services the inquirer referred to, none of these services specified are reimbursable as covered health expenses unless they are specifically provided by health professionals who are licensed by the State of New York to perform such services, subject further to the requirement that the provision of these services must fall within the scope of the license issued. Where there is no statewide license which authorizes the performance of such services, the services are non-reimbursable under No-fault. Note that, irrespective of the licensing question, the following services referred to are non-reimbursable as a matter of law: Non-prescription drugs, as per Section 5102(a). Any properly licensed services provided are ultimately subject to factual determinations as to medical necessity. It would be appropriate for a carrier to utilize a reputable study or opinion from an accredited medical body or appropriate medical specialist as a basis for determining necessity when warranted, particularly when billing for new procedures."

Respondent has raised a valid defense of whether over the counter drugs are reimbursable as a covered expense under no fault. However, respondent has not provided proof that the prescription given and the product prescribed was available in the same form and dosage over the counter. The defense fails for this reason as a matter of fact. Application granted in the amount of \$732.32

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
	TMVQS Corp d/b/a Trinity Pharmacy	03/04/20 - 03/04/20	\$723.32	Awarded: \$723.32
Total			\$723.32	Awarded: \$723.32

B. The insurer shall also compute and pay the applicant interest set forth below. 06/10/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim arose from an accident that occurred on or after April 5, 2002, interest shall be paid, at the rate of 2% per month, simple, from the arbitration filing date and ending with the date of payment of the award

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 an attorney's fee, in accordance with 11 NYCRR 65-4.6. However, 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

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 Nassau

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

10/06/2021
(Dated)

Stacey Erdheim

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:
8d69fb0c716dc321d713a32f37e87e80

Electronically Signed

Your name: Stacey Erdheim
Signed on: 10/06/2021