

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Skillman Chemists Corp.  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-22-1265-3706
Applicant's File No.	GM22-478505
Insurer's Claim File No.	8740207670000001
NAIC No.	22055

**ARBITRATION AWARD**

I, John O'Grady, 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 02/13/2023  
Declared closed by the arbitrator on 02/13/2023

Helen Cohen Esq. from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

David Trompeter Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,007.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing the applicant reduced the amount in dispute from \$2007.00 to \$594.24, acknowledging payment for the difference between the amount claimed and the amended amount in dispute.

Stipulations WERE made by the parties regarding the issues to be determined.

Unless otherwise indicated in Sections 2 above and 3 below, in which case the dispute between the parties will be addressed in this Award, the parties stipulated and agreed that (i) Applicant has met its prima facie burden by submitting evidence that payment of no-fault benefits are overdue, and proof of its claim was mailed to and received by Respondent; (ii) Respondent's denial of the subject claim was timely issued; and (iii) the

amount claimed does not exceed the maximum permissible charges under the fee schedule applicable to the disputed services.

### 3. Summary of Issues in Dispute

#### CASE SUMMARY

Applicant, as assignee of an eligible injured person, a 36-year-old female, seeks reimbursement of the following charge(s) following a motor vehicle accident on February, 2022: lidocaine 5% ointment, methocarbomal 500 mg and Tylenol 500 mg, delivered on May 5, 2022.

Respondent timely denied the claim(s), paying the claims in part and denying them in part and contending that it made proper payment pursuant to the Workers Compensation Pharmacy Fee Schedule.

#### ISSUE(S)

Whether respondent demonstrates that it made proper payment pursuant to the Fee Schedule.

### 4. Findings, Conclusions, and Basis Therefor

Respondent relies on a Fee Audit that was not submitted until the day of the hearing. The general rule of this arbitrator is that submissions made within 30 days of the date of the hearing will not be considered. A primary purpose of the rule is to prevent late submissions of documents and proof that would deprive the opposing party of sufficient time to offer an adequate response. The rule is subject to alteration depending on the circumstances and a demonstration as to why a submission could not have been made at least 30 days prior to the hearing. Here there were no such circumstances presented to alter the rule, applicant was prejudiced by the late submission respondent's contentions.

Without that fee audit, respondent's fee schedule defense therefore fails and respondent has no other defense to this claim. It is well settled that an applicant for no-fault benefits establishes its prima facie entitlement to payment by submitting evidence that payment of no-fault benefits are overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." *Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, 501, 14 N.Y.S.3d 283, 286 (2015). A "facially valid claim," is presented where it sets forth the name of the patient; date of accident; date of services; description of services rendered and the charges for those services. See, *Vinings Spinal Diagnostic P.C. v. Liberty Mutual Insurance Company*, 186 Misc.2d 287; 717 NYS2d 466 (1st Dist. Ct. Nass. Co.)

As applicant has shown that it submitted claims for these no-fault benefits, has made out its prima facie showing that it is entitled to payment, and respondent has offered no defense that is sustained or survives preclusion, the claim is granted for the amended amount in dispute, as if made on one bill and timely denied.

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	Amount Amended	Status
	<b>Skillman Chemists Corp.</b>	<b>05/05/22 - 05/05/22</b>	<b>\$2,007.00</b>	<b>\$594.24</b>	<b>Awarded: \$594.24</b>
<b>Total</b>			<b>\$2,007.00</b>		<b>Awarded: \$594.24</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/07/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

INTEREST: Pursuant to Insurance Law § 5106 (a), interest accrues on overdue no-fault insurance claims at a rate of 2% per month. A claim is overdue when it is not paid within 30 days after a proper demand is made for its payment (Insurance Law § 5106 [a]; 11 NYCRR 65.15 [g]). The Superintendent's regulation tolls the accumulation of interest if the claimant "does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations" (11 NYCRR 65-3.9 [c]). The Superintendent has interpreted this provision to mandate that the accrual of interest is tolled, regardless of whether the particular denial at issue was timely. That interpretation was upheld by the Court of Appeals in LMK Psychological Servs, P.C. v. State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481 (April 2, 2009). Where no denial of claim is issued in response to a proper demand for payment, the insurer does not benefit from the tolling provision and interest will accrue from the date 30 days after the proper demand for payment is made. Interest that accrues when a denial of claim is not issued within 30 days after the proper demand for payment is made will be tolled upon the issuance of a denial of claim, although such denial is untimely, and the failure to request arbitration or institute a lawsuit within 30 days after receipt of that denial of claim form.

#### C. Attorney's Fees

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

ATTORNEY'S FEES: 11 NYCRR 65-4.6 establishes a minimum attorneys' fee and further provides that:

For cases filed on or before February 4, 2015, the "attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the . . . court, subject to a maximum of \$850" (11 NYCRR 65-4.6 [e]). The October 8, 2003, opinion letter of the Superintendent interpreted that regulation and stated that the minimum amount of attorneys' fees awarded to an assignee health care provider pursuant to Insurance Law § 5106 is "based upon the aggregate amount of payment required to be reimbursed based upon the amount awarded for each bill which had been submitted and denied. The minimum attorney fee . . . is not due and owing for each bill submitted as part of the total amount of the disputed claim sought in the court action" (Ops Gen Counsel NY Ins Dept No. 03-10-04 [Oct. 2003]). For purposes of calculating attorneys' fees, the Superintendent has interpreted a claim to be the total medical expenses claimed in a cause of action pertaining to a single insured, and not each separate medical bill submitted by the provider. The Insurance Department's interpretation of its own regulation was upheld by the Court of Appeals in LMK Psychological Servs, P.C. v. State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481 (April 2, 2009). Attorneys' fees are therefore to be calculated based on the aggregate of all bills for each insured; and

For cases filed after February 4, 2015, the attorney's fee is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). The attorney's fee shall be limited as

follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360. If the nature of the dispute results in an attorney's fee that could be computed in accordance with the limitations prescribed in both subdivision (c) and this subdivision, the higher attorney's fee shall be payable.

- 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 NY

SS :

County of Nassau

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

02/16/2023

(Dated)

John O'Grady

### **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:**  
011d04a6ebad8c89e920338f90f1e705

### Electronically Signed

Your name: John O'Grady  
Signed on: 02/16/2023