

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Titan Equipment Inc.  
(Applicant)

- and -

New York City Transit Authority  
(Respondent)

AAA Case No. 17-22-1263-7112

Applicant's File No. N/A

Insurer's Claim File No. BU202109210006001

NAIC No.

**ARBITRATION AWARD**

I, Allison Schimel, 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/Assignor/Claimant

1. Hearing(s) held on 02/06/2023  
Declared closed by the arbitrator on 02/26/2023

Jeffrey Datikashvili from The Sigalov Firm PLLC participated virtually for the Applicant

Shlomit Buchinsky from Jones, Jones, LLC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,004.04**, 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 claim in the amount of \$1,004.04, for medical equipment including an EMS unit with belt, infrared heating lamp, and massager, provided on date of service 10/27/21, arises out of a motor vehicle accident that occurred on 9/21/21. The Assignor, GP, was a 46 year old male involved in the subject accident. Respondent denied the claim based upon the defense that coverage does not apply to any person while occupying a motorcycle.

The issue in dispute is whether Respondent properly denied the claim based upon its defense that the Assignor was occupying a motorcycle and therefore not eligible for no-fault benefits.

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

The case was decided on the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing.

Herein, Applicant established a prima facie case of entitlement to reimbursement of its claim, by submitting evidence that the prescribed statutory billing forms were mailed and received by the insurer and payment of No-Fault benefits was overdue. See, *Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, NY Slip Op 04787 (2015). A No-Fault claim must be paid or denied within thirty (30) calendar days from the date an Applicant supplies proof of claim. See, New York Insurance Law Sec. 5106(a); 11 NYCRR 65.3.8 (a)(1).

In support of its defense, Respondent submits in evidence a photograph of the specific scooter involved in the accident, along with an affidavit by its Claims Examiner explaining that the photograph depicts the specific scooter that was involved in the subject accident. Respondent also submits evidence that this particular make and model of scooter, the "RSD x Super 73- RX Malibu" is a class "B" scooter/motorcycle, which falls under the definition of a motorcycle as defined by the No-fault law, as it has a speed of over 20-30 mph. I also note that the photograph shows that "Super 73" is depicted on the scooter itself in the photograph.

New York Vehicle and Traffic Law Section 121-b defines motorcycles as follows:

**121-b. Limited use motorcycle.** A limited use vehicle having only two or three wheels, with a seat or saddle for the operator. A limited use motorcycle having a maximum performance speed, of more than thirty miles per hour but not more than forty miles per hour shall be a class A limited use motorcycle. A limited use motorcycle having a maximum performance speed of more than twenty miles per hour but not more than thirty miles per hour, shall be a class B limited use motorcycle. A limited use motorcycle having a maximum performance speed of not more than twenty miles per hour shall be a class C limited use motorcycle.

In addition, The No-Fault law defines a motorcycle as:

"motorcycle" means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law

Section 123 of the New York Vehicle and Traffic Law defines a motorcycle as:

Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

As stated above, Respondent has submitted competent evidentiary proof that the specific model of scooter, has a speed of 20-30 mph. Pursuant to the above sections of the NY Vehicle and Traffic Law, this would clearly be defined as a Class B motorcycle, having a speed of more than twenty miles per hour but not more than thirty miles per hour, and would also fall under the definition of a motorcycle under the No-fault law.

Under Insurance Law §5103(a)(1), an occupant of a motorcycle is not entitled to recover no-fault benefits. The exclusions set forth under 11 NYCRR 65-1.1, together with the exclusions subsection of the prescribed policy endorsements, also specifically provide that occupants of motorcycles are excluded from first-party no-fault benefits.

While a motor vehicle accident victim may assign his or her No-Fault claim to a medical provider who has provided a medical service, 11 NYCRR 65-3.11, the medical provider-assignee "stands in the shoes" of an Assignor, and thus acquires no greater rights than its assignor. *East Acupuncture, P.C. v. Allstate Ins. Co.*, 61 A.D.3d 202, 211, (2d Dept. 2009) (citing *Matter of International Ribbon Mills*, 36 N.Y.2d 121, 126. Thus, if the EIP himself could not submit the within dispute over non-payment of the bills by the no-fault insurer, an assignee of his rights also cannot do so.

Respondent in this case has submitted competent evidence demonstrating that EIP was not eligible for PIP benefits because he was the occupant of a motorcycle at the time of the underlying loss. This is a "coverage" defense that need not be raised and preserved in a timely denial. A defense of lack of coverage is not precluded by the insurer's failure to pay or deny the subject No-Fault claim within the requisite 30-day period. *St. Vincent's Hospital & Medical Center v. Allstate Ins. Co.*, 69 A.D.3d 923, 893 N.Y.S.2d 589 (2d Dept. 2010).

The timeliness of the denial of claim form issued by an insurer is irrelevant to the extent the insurer's defense is predicated upon the fact that the insurance policy issued by it did not provide coverage for No-Fault benefits. *JSI Expert Service v. Allstate Ins. Co.*, 16 Misc.3d 132(A), 847 N.Y.S.2d 896 (Table), 2007 N.Y. Slip Op. 51484(U), 2007 WL 2247231 (App. Term 2d & 11th Dists. July 12, 2007).

For the reasons set forth herein, Respondent correctly denied the claim, since the claimant was an occupant of a motorcycle and was therefore expressly excluded from no-fault coverage, and the Applicant assignee stands in the shoes of its assignor. Accordingly, the claim is denied. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Suffolk

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

02/26/2023

(Dated)

Allison Schimel

**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:**  
037fa7265127ad030612572b3d9671f0

### **Electronically Signed**

Your name: Allison Schimel  
Signed on: 02/26/2023