

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

S & M Pharmacy  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-22-1268-7198

Applicant's File No. 362161

Insurer's Claim File No. 0674461884  
1CT

NAIC No. 19240

### ARBITRATION AWARD

I, Kenneth Rybacki, 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 10/16/2023  
Declared closed by the arbitrator on 10/16/2023

Neil Menashe, Esq. from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

Marissa Allis, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$513.52**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in issue was reduced to \$318.81 as per the agreement of counsel for the parties to comport Applicant's claims to applicable fee schedules.

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

Counsel for the parties stipulated that Applicant's claims comported with applicable fee schedules and Applicant's counsel stipulated that statutory interest on any award would run from the date of Applicant's filing.

### 3. Summary of Issues in Dispute

Whether Applicant's claims arising from a 6/7/22 accident for pharmaceuticals provided to P.H. on 8/26/22 are ripe for determination. Respondent avers that the claim-determination period remained tolled at the time of filing pending a response to its requests for further verification.

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

This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument. No submissions following the close of the record on 11/14/22 were admitted, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

*(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."*

This action for the payment of a claim for pharmaceuticals provided on 8/26/22 arises from a 6/7/22 accident. Respondent avers that the claim was not yet ripe for determination at the time of filing as there remained outstanding responses to its requests for further verification.

An insurer is required to pay or deny a claim within thirty (30) days of the insurer's receipt of the claim, N.Y. Ins. Law Sec. 5106. An insurer can toll the claim-determination period through a reasonable and seasonable request for verification, 11 NYCRR 65-3.8 (a)(1). An insurer must request the verification within fifteen (15) business days from the date that the insurer received the claim, 11 NYCRR 65-3.5. Even if the initial request is not made within the fifteen-business-day period, the request will serve as a toll so long as it is made within the thirty-day period prescribed by Ins. Law Sec. 5106, 11 NYCRR 65-3.8 (l). If after thirty days the insurer has not received a response to the initial request for verification, then, within ten calendar days after the thirty-day period from the initial request, the insurer at a minimum, must make a second request for the documents sought, 11 NYCRR 65-3.6.

It is the insurer's burden to not only show that the insurer did not receive the requested verification, but that its requests were mailed within the prescribed time frames of 11 NYCRR 65-3.5 and 11 NYCRR 65-3.6, Island Life Chiropractic, P.C. v Travelers Ins. Co., 69 Misc.3d 139(A), see, Right Aid Medical Supply Corp. v. State Farm Mut. Auto. Ins. Co., 2019 Slip Op 51409(U); T & S Medical Supply v. MVAIC, 69 Misc.3d 139(A). Given that insurers may now deny claims based on a failure of a provider to submit a response to an insurer's verification requests within 120 days from the date that

the initial request was made, 11 NYCRR 65-3.8(b)(3), it seems appropriate for the insurer to demonstrate that its requests were timely sent to the provider and that no response was forthcoming. This is similar to an insurer's burden in cases where it denies claims based on failure to attend physical examinations or examinations under oath. In each instance, the insurer must prove that the proposed examinee was duly noticed for the examination within the prescribed period and failed to attend the same. No such proof is contained in the record admitted. I therefore find that the claim was overdue at the time of Applicant's filing for arbitration on 10/3/22.

Applicant is awarded \$318.81.

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                   |
|--------------|----------------|---------------------|-----------------|----------------|--------------------------|
|              | S & M Pharmacy | 08/26/22 - 08/26/22 | \$513.52        | \$318.81       | Awarded: \$318.81        |
| <b>Total</b> |                |                     | <b>\$513.52</b> |                | <b>Awarded: \$318.81</b> |

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/03/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Statutory interest shall run from the date of filing, 10/3/22 to the date of payment by the Respondent.

C. Attorney's Fees

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

Attorney fees are awarded at 20% of the amount of first-party benefits awarded in the aggregate, plus interest, in accordance with the limitations set forth in 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 NY  
SS :  
County of Suffolk

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

10/20/2023  
(Dated)

Kenneth Rybacki

**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:**  
6744d2599a335a2b2a1ac683b0e1dee2

**Electronically Signed**

Your name: Kenneth Rybacki  
Signed on: 10/20/2023