

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pristine Rx Corp
(Applicant)

- and -

New York City Transit Authority
(Respondent)

AAA Case No.	17-22-1252-2429
Applicant's File No.	156.204
Insurer's Claim File No.	du202112070008006
NAIC No.	Self-Insured

ARBITRATION AWARD

I, Gregory Watford, 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 (AH)

1. Hearing(s) held on 11/14/2023
Declared closed by the arbitrator on 11/14/2023

George Malonoukos from Tsirelman Law Firm PLLC participated virtually for the Applicant

Laura Weiss from Foley, Smit, O'Boyle & Weisman participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,098.40**, 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 dispute arises from the underlying automobile accident of December 7, 2021, in which the Assignor, a 45-year-old male was injured. Thereafter, he sought private medical attention where he was evaluated, was recommended to begin conservative care treatments and was prescribed various medications.

On March 1, 2022, Assignor received pain medication in the form of Lidocaine, Omeprazole, Naproxen and Cyclobenzaprine. At issue in this case are the fees associated with the medication provided to Assignor. Applicant timely submitted the bill

to Respondent in an amount totaling \$2,098.40. Respondent partially paid \$1,700.49 and denied payment of the balance of \$397.91 on the grounds that Applicant billed in excess of amounts permitted under the fee schedule.

The issues to be decided in this case are:

Whether Applicant established entitlement to No-Fault compensation for pain medication provided to Assignor.

Whether Respondent established that Applicant billed in excess of the Fee schedule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions and documents contained in the American Arbitration Association's ADR Center Electronic Case File (ECF). These submissions constitute the record in this case. This case was decided on the submissions of the parties as contained in the ECF and the oral arguments of the parties' representatives. There were no witnesses.

Pursuant to Insurance Law § 5106(a) and the Insurance regulations, an insurer must either pay or deny a claim for motor vehicle no-fault benefits, in whole or in part, within 30 days after an applicant's proof of claim is received (*see* Insurance Law § 5106[a]; 11 NYCRR 65-3.8[c]; *see also* 11 NYCRR 65-3.5). Infinity Health Products, Ltd. v. Eveready Ins. Co., 67 A.D.3d 862, 864, 890 N.Y.S.2d 545, 547 (2d Dept. 2009). A claimant's prima facie proof of claim for no-fault benefits must demonstrate that the prescribed claim forms were mailed to and received by the insurer and are overdue. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 506, 14 N.Y.S.3d 283, 290 (2015). Applicant's proof is also in Respondent's denials, which acknowledged receipt of the bills.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim. Viviane Etienne Med Care, PC v. Countrywide Ins. Co., *Id.* Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. *See Citywide Social Work & Psych. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004, NY Slip Op 24034 (Civ. Ct., Kings County 2004).

Fee Schedule

Effective April 1, 2013, 11 NYCRR 65-3.8(g)(1) has been amended so that the application of the New York State Workers Compensation fee schedule is no longer a precludable defense, and no payment is due on those claims in excess of the fee schedule. Respondent may present its defense without regard to a timely NF 10. USAA General Indemnity Co. v. New York Chiropractic & Physical Therapy, PLLC, 60 Misc.3d 254 (Civ. Ct. Richmond Co., Lisa Grey, J., May 1, 2018).

On December 11, 2018, a new Fee Schedule was promulgated with an original effective date of April 1, 2019. However, the 34th Amendment to Regulation 83 delayed the Fee Schedule's effective date to October 1, 2020. The services in dispute are governed by the new Fee Schedule.

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, (N.Y. App. Term, 1st Dep't, 2006); Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 13 Misc.3d 172, 822 N.Y.S.2d 378, (Civil Ct, Kings Co. 2006).

When the issue in contention involves the appropriateness of a billing adjustment based on the fee schedule, Respondent must first demonstrate that it has timely and credibly established the basis for its denial(s) before the burden of proof shifts to the Applicant to establish that Respondent's adjustment was contrary to No-Fault regulations and/or the applicable fee schedule. Applicant must then establish a prima facie case of entitlement to additional reimbursement by demonstrating credible evidence that the adjusted rate of reimbursement was incorrect. (See, Westchester Medical Center v. Nationwide Mut. Ins. Co., 78 A.D.3d 1168, 911 N.Y.S.2d 907 (2d Dept. 2010). As of April 1, 2013, the effective date of the Fourth Amendment to 11 NYCRR 65-3, Respondent is only required to reimburse Applicant in accordance with the applicable fee schedule.

The "burden remains on the insurer to assert a defense that a provider billed in excess of the fee schedule." East Coast Acupuncture, PC v. Hereford Insurance Company, 51 Misc. 3d 441, 26 N.Y.S. 3d 441, 443 (Civil Ct. Kings County 2016) (holding that the new regulation "does not place any additional requirements on the medical provider, such as a requirement, in the general case, to substantiate the calculation of its fees).

At the hearing, Respondent demonstrated that after Applicant initiated the instant arbitration on 5/31/22, but prior to the instant hearing on 11/14/23, it paid Applicant \$108.20 for the Omeprazole, \$1,528.72 for the Lidocaine, \$32.37 for the Naproxen and \$31.20 for the Cyclobenzaprine.

The Pharmacy Fee schedule provided the following formula for generic drugs:

The Average Wholesale Price (AWP), as found in the most current Red Book or Medi-Span database or any successor publisher, less 20% plus \$5.00 for dispensing.

In support of its fee schedule defense, Respondent provided detailed calculations and uploaded the calculations from the Medi-Span database.

Applicant did not present any evidence to demonstrate that Respondent's calculations for reimbursement were incorrect and that it was entitled to additional reimbursement. Accordingly, I find that Respondent has sufficiently supported its fee schedule defense for the medication in dispute.

According to the documents in the ECF, Applicant initiated the instant arbitration on 5/31/22. Respondent issued a denial for the instant claim on 8/16/22. Respondent

provided proof of payment in the form of a check, dated 8/17/22. Respondent also provided a copy of the Bill Tracker with the Bill History which indicated that the check cleared on 12/8/22.

Interest

At the hearing, the parties agreed that interest is owed **from 5/31/22 through the date of payment, 8/17/22**. Applicant is also entitled to Attorney's fees.

Applicant's award is limited to Interest and Attorney's Fees.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot, without merit, and/or waived insofar as not raised at the time of the hearing.

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
	Pristine Rx Corp	03/01/22 - 03/01/22	\$2,098.40	Awarded (interest only)
Total			\$2,098.40	Awarded: \$0.00

B. Attorney's Fees

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

Respondent shall pay Applicant a separate attorney's fee, in accordance with 11 NYCRR 65-4.6(d). Since the arbitration request was filed on or after February 4, 2015, this case 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). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6(d) subject to a maximum fee of \$1,360.00.

- C. 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 Westchester

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

12/11/2023

(Dated)

Gregory Watford

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:
8e407898d775bcf8e1cf2e254892a3e0

Electronically Signed

Your name: Gregory Watford
Signed on: 12/11/2023