

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Orthocare Supplies Inc. (Applicant)	AAA Case No.	17-23-1328-1242
- and -	Applicant's File No.	GM23-617157, GM23-619893, GM23-623522, GM23-627068
State Farm Mutual Automobile Insurance Company (Respondent)	Insurer's Claim File No.	3245B240R
	NAIC No.	

ARBITRATION AWARD

I, Anne Malone, 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

1. Hearing(s) held on 06/18/2024
Declared closed by the arbitrator on 06/18/2024

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

John Rossillo, Esq. from Rossillo & Licata LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,188.86**, 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 56 year old EIP reported involvement in a motor vehicle accident on December 11, 2022; reported injury and received various items of durable medical equipment provided by the applicant from April 15, 2023 to May 12, 2023.

The applicant submitted a claim for this durable medical equipment services, payment of which was denied by the respondent on the grounds that there was no

coverage for this claim because the policy of insurance issued by the respondent was cancelled on September 21, 2022 and therefore, all claims for New York no-fault benefits were denied for the dates of this loss.

The issue to be determined at the hearing is whether the respondent established its coverage defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

The respondent contends that it did not insure the vehicle that the EIP was operating on the date of the subject accident.

To support its contention that the subject policy was effectively cancelled prior to the date of the subject accident, the respondent submitted an Underwriting Affidavit by Jennifer Kika sworn to on October 7, 2023; a Carrier Discovery Report dated February 1 2023; the global denial and the Acknowledgement of Cancellation request dated September 23, 2022 indicating the effective date of cancellation of September 21, 2022.

New York State Vehicle and Traffic Law Section 313 states as follows: § 313

Notice of termination. 1. (a) No contract of insurance for which a certificate of insurance has been filed with the commissioner shall be terminated by cancellation by the insurer until at least twenty days after mailing to the named insured at the address shown on the policy a notice of termination by regular mail, with a certificate of mailing, mailing, properly endorsed by the postal service to be obtained, except where the cancellation is for non-payment of premium in which case fifteen days' notice of cancellation by the insurer shall be sufficient...

(b) Every insurer shall retain a copy of the notice of termination mailed pursuant to this chapter and shall retain the certificate of mailing obtained from the postal service upon the mailing of the original of said notice. A copy of a notice of termination and the certificate of mailing, when kept in the regular course of the insurer's business, shall constitute conclusive proof of compliance with the mailing requirements of this chapter.

2. (a) Upon the termination of an owner's policy of liability insurance, other than an owner's policy of liability insurance for a motorcycle, at the request of the insured or by cancellation by the insurer, the insurer shall file a notice of

termination with reference to such policy, as opposed to any insured vehicle or vehicles under such policy, with the commissioner not later than thirty days following the effective date of such cancellation or other termination, in accordance with the regulations required by paragraph (c) of this subdivision. An insurer shall not file a notice of termination with the commissioner except as required by this subdivision.

3. A cancellation or termination for which notice is required to be filed with the commissioner pursuant to subdivision two of this section shall not be effective with respect to persons other than the named insured and members of the insured's household until the insurer has filed a notice thereof with the commissioner or until another insurance policy covering the same risk has been procured, except that a notice filed with the commissioner, in the format prescribed by the commissioner, within the period prescribed in subdivision two of this section shall be effective as of the date certified therein, regardless of whether a suspension order is issued pursuant to section three hundred eighteen of this article.

The applicant did not submit any evidence to refute the respondent's proof of cancellation of the subject policy prior to the date of the subject accident.

After a review of the evidence submitted, I find that the respondent has established that the policy at issue was cancelled prior to the date of this loss.

Under these circumstances, the respondent has established that the applicant is not entitled to reimbursement for the claim at issue from this respondent.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. 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 CT

SS :

County of Fairfield

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

07/17/2024
(Dated)

Anne Malone

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:
7f64722c324a05b367327d248a4d6e31

Electronically Signed

Your name: Anne Malone
Signed on: 07/17/2024