

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Abdul Massih Family Health NP PC  
(Applicant)

- and -

Hereford Insurance Company  
(Respondent)

AAA Case No. 17-23-1325-7942

Applicant's File No. MBA8746

Insurer's Claim File No. 95543-03

NAIC No. 24309

### **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 07/15/2024  
Declared closed by the arbitrator on 07/15/2024

Gregory Flood, Esq. from Law Office of Marvin Ben-Aron, P.C. participated virtually for the Applicant

Chris Fingerhut, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,211.99**, 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 39 year old EIP was involved in a motor vehicle accident on October 14, 2021; claimed related injury and underwent X-rays of the lumbar and surgical spine and Ligament Laxity examinations provided by the applicant from December 29, 2021 to January 3, 2022.

The applicant submitted a claim for these medical services, payment of which was denied by the respondent because the bills at issue were not submitted within 45 days of the dates of service.

The respondent also asserted a fee schedule defense.

**The issues to be determined at the hearing are:**

**Whether the applicant established its *prima facie* entitlement to no fault benefits for claim at issue.**

**Whether the respondent established its fee schedule 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.

Applicant's *prima facie* case of entitlement to no-fault benefits

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the untimely submission of the bill/bills at issue if such defense is not raised in a timely denial. See New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that late submission of the bill/bills will be excused where the applicant can provide a reasonable justification of the failure to timely submit the bill/bills. 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2<sup>nd</sup> and 11<sup>th</sup> Jud. Dists. 2007.)

The respondent's denials were based on late submission of the bills for services rendered on December 29, 2021, December 31, 2021 and January 3, 2022. According to the NF-10s all were received by the respondent on March 10, 2022. The denials, which contained the requisite "reasonable justification" language were all timely.

The applicant submitted three letters dated February 23, 2022 which it received from The Hartford which stated that the bills at issue in this claim were being

returned because they were not related to any claims or claim numbers which could be identified by The Hartford. These bills were subsequently submitted to Hereford Insurance Company.

The submissions do not contain any further explanation from the applicant regarding its late submission of the bills at issue.

Based on the foregoing, the respondent has established that the bills for the services at issue were submitted more than 45 days after the dates of service and the applicant has not established its *prima facie* entitlement for no fault benefits for the claim at issue.

Under these circumstances, the fee schedule issue is moot.

**Accordingly, the claim is denied 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.

07/18/2024  
(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:**  
dd230885f866f3bd5cbda0e9eb7a4bb4

**Electronically Signed**

Your name: Anne Malone  
Signed on: 07/18/2024