

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Gaetan Jean Marie Family Health NP PLLC  
(Applicant)

- and -

Liberty Mutual Insurance Company  
(Respondent)

AAA Case No. 17-24-1330-7225

Applicant's File No. 23-008454

Insurer's Claim File No. 0522503050003

NAIC No. 36447

### ARBITRATION AWARD

I, Claire Gallagher, 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 07/30/2024  
Declared closed by the arbitrator on 07/30/2024

Christopher Milazzo, Esq. from The Licatesi Law Group, LLP participated virtually for the Applicant

Elvira Messina, Esq. from Callinan & Smith LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,028.80**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended to \$932.15 as follows: the claim for Date of Service 01/04/23 was amended to \$631.09 pursuant to the New York State Workers' Compensation Fee Schedule and the claim for Date of Service 03/22/23 is \$301.06.

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

Applicant has established its prima facie case for entitlement to No-Fault compensation for its claim.

The interest date is 12/30/23.

### 3. Summary of Issues in Dispute

At issue is whether Respondent properly denied the claims at issue based on Assignor's failure to provide the requested verification and if not, whether Respondent has sustained its Fee Schedule defenses.

This dispute arises from the underlying automobile accident which occurred on 12/29/22 in which Assignor, a 36-year-old female, was involved. At issue are claims for office visits, injections, and related procedures, Dates of Service 01/04/23 and 03/22/23.

Respondent denied the claims as follows:

*"We have no duty to provide coverage under this policy unless there has been full compliance with the following duties: Part E - Duties after an Accident or Loss B. A person seeking any coverage must: 1. Cooperate with us in the investigation, settlement or defense of any claim or suit. 2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss. 3. Submit, as often as we reasonably require: b. to examination under oath and subscribe the same. 4. Authorize us to obtain: a. medical reports; and b. other pertinent records. 5. Submit a proof of loss when required by us. You have failed to provide requested documentation for your proof of claim. You have not cooperated with numerous communication attempts by mail to you and your attorney, Law Office of [XXXX]. In accordance with the policy from which you seek coverage, your claim is denied for non-cooperation."*

Respondent has also asserted Fee Schedule defenses.

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

I have reviewed all timely submitted relevant documents contained in the ADR Center record maintained by the American Arbitration Association for this case, and have considered the oral arguments presented at the hearing in this matter. As stipulated to by the parties, Applicant has established its prima facie case of entitlement to No-Fault compensation for its claim. *See Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742 (2d Dept 2004). Once an applicant establishes its prima facie case, the burden then shifts to the insurer to prove its defense. *See CityWide Social Work & Psychological Servs. v. Travelers Indem. Co.*, 3 Misc 3d 608 (Civ Ct, Kings County 2004).

## **1. Non-Cooperation Defense**

Applicant asserted that Respondent's defense on the claims must be precluded on the grounds that Respondent did not establish that it mailed the verification requests to it and that the claims were timely denied. I am persuaded by Applicant's position and find that Respondent has not submitted evidence establishing that it timely mailed either the delay or verification letters to Applicant. Applicant's name does not appear on any of the delay or verification letters, which are addressed to Assignor's attorney contained in the ADR Center record for this case.

Based on a review of the evidence presented in this case, and upon consideration of the arguments raised by the parties at the hearing of this matter, I find that Respondent's defense is precluded on the grounds that it is not established that it properly delayed payment on the claims and timely denied the claims. *See Island Life Chiro., P.C. v Travelers Ins. Co.*, 2019 NY Slip Op 51273(U) (App. Term 2d, 11th and 13th Jud. Dist. 2019).

## **2. Fee Schedule Defense**

Respondent has the burden of coming forward with competent evidentiary proof to support its Fee Schedule defenses. *See Robert Physical Therapy, P.C. v. State Farm Mut. Auto Ins. Co.*, 13 Misc 3d 172 (Civ Ct, Kings County 2006). Respondent did not submit evidentiary proof in support of Fee Schedule defenses, but instead cited to the Explanation of Review forms for the claims.

At the hearing of this matter, counsel for Applicant asserted that Respondent had not submitted evidence sufficient to establish its defense on the claims.

When the calculation of the proper fee for a particular service or procedure is clearly set forth in the Fee Schedule, an interpretation of the Fee Schedule by a qualified professional coder is not required. However, when there is more than one reasonable interpretation of the proper fee for a particular service rendered, an interpretation by a qualified professional coder is required. I find that because there could be more than one reasonable interpretation of the proper fee for the services at issue, Respondent's Fee Schedule defenses must be supported by the opinion of a qualified professional fee coder. Therefore, I find that Respondent has not sustained its Fee Schedule defenses for the claims at issue.

Award in favor of Applicant.

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
	<b>Gaetan Jean Marie Family Health NP PLLC</b>	<b>03/22/23 - 03/22/23</b>	<b>\$301.06</b>	<b>\$301.06</b>	<b>Awarded: \$301.06</b>
	<b>Gaetan Jean Marie Family Health NP PLLC</b>	<b>01/04/23 - 01/04/23</b>	<b>\$727.74</b>	<b>\$631.09</b>	<b>Awarded: \$631.09</b>
<b>Total</b>			<b>\$1,028.80</b>		<b>Awarded: \$932.15</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 12/30/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay Applicant interest as set forth below. 12/30/23 is the date from which interest shall accrue, as stipulated to by the parties, at rate of 2% per month and ending with the date of payment of the Award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Respondent shall pay Applicant's attorney's fees in accordance with 11 NYCRR 65-4.6(d).

- 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 Westchester

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

07/30/2024  
(Dated)

Claire Gallagher

#### **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:**  
6b2f46fcad7089762445bd2c8b5aaada

**Electronically Signed**

Your name: Claire Gallagher  
Signed on: 07/30/2024