

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tri-Borough NY Medical Practice PC  
(Applicant)

- and -

Liberty Mutual Insurance Company  
(Respondent)

AAA Case No. 17-23-1329-7711

Applicant's File No. N/A

Insurer's Claim File No. 050515657

NAIC No. 36447

### ARBITRATION AWARD

I, Bernadette Connor, 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 07/02/2024  
Declared closed by the arbitrator on 07/02/2024

Usman Nawaz, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Colleen Foster, Esq. from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$142.62**, 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 Assignor, a 22-year-old female, sustained injuries in a motor vehicle accident on August 12, 2022. Applicant seeks reimbursement for a medical examination performed on September 21, 2022. Respondent neither paid nor denied the claim, asserting that it did not receive the bill for services rendered.

The issue to be determined is whether Applicant has established a prima facie entitlement to No-Fault benefits.

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

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms to the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio*, 100 NY2d 854, 768 NYS2d 423 (2003).

Applicant establishes a prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; *Mary Immaculate Hosp. v. Allstate Ins. Co.* 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Damadian MRI in Canarsie, P.C. v. General Assurance Company*, 2006 NY Slip Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006 Appellate Term, 2d Department); *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3<sup>rd</sup> 128, 784 N.Y.S. 2d 918 (2003).

A No-Fault claim must be paid or denied within thirty days, or it is "overdue." If an insurer fails to timely deny a claim, the insurer is precluded from raising its defenses. See *Presbyterian Hosp. in the City of New York v. Maryland Casualty Ins. Co.*, 90 N.Y.2d 274 (1997). The exception to the preclusion rule applies where the denial is based upon the lack of coverage. *Central Gen. Hosp. v. Chubb Group of Ins. Co.* 90 N.Y.2d 195 (1997). The exception does not apply in this matter as Respondent did not deny the claim based on the lack of coverage.

Respondent argued that it did not receive a bill for services rendered in this matter. Applicant has provided no evidence to demonstrate the mailing of the bill to Respondent. I therefore find that Applicant has failed to establish a prima facie entitlement to No-Fault benefits.

Accordingly, the claim is denied.

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 NY  
SS :  
County of New York

I, Bernadette Connor, 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)

Bernadette Connor

**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:**  
553577e7c9206536c51eb371b8b62d7b

**Electronically Signed**

Your name: Bernadette Connor  
Signed on: 07/30/2024