

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

S & K Warbasse Pharmacy Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1295-5594
Applicant's File No.	DK23-344124
Insurer's Claim File No.	0169362650101069
NAIC No.	22063

ARBITRATION AWARD

I, Bryan Hiller, 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 08/05/2024
Declared closed by the arbitrator on 08/05/2024

Henry Guindi, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Rob Sheridan, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$360.10**, 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

Whether Respondent has sustained its defense that the claim was properly denied pursuant to a Settlement Agreement?

4. Findings, Conclusions, and Basis Therefor

In dispute is Applicant S&K Warbasse Pharmacy's claim, as the assignee of a then 50 year old female who was injured in a motor vehicle accident on November 9, 2022, for a pharmaceuticals delivered to the Assignor on February 17, 2023.

The bills in dispute are for the pharmaceuticals in the total amount of \$260.10. Applicant originally billed in the amount of \$1,425.39 and Respondent partially paid in the amount of \$1,065.29 leaving an outstanding remainder of \$360.10. The record shows that Respondent denied additional payment based on claim that "Reimbursed pursuant to the Settlement Agreement completed July 22, 2022 that was executed between Geico and Simon Field, Marc Kassman, Kim Volman, Alexander Burlak, Jacqueline Mitsel and Arlen Leis."

As there are no issues related to the timeliness of the respective claim forms, the sole question to be answered is whether Respondent validly applied the terms of the Settlement Agreement based on the evidence contained in the electronic file.

In deciding such a case, a determination needs to be made whether the Respondent has come forward with sufficient evidence that demonstrates a contractual nexus between the parties. To prevail, and establish privity of contract, it is incumbent upon Respondent to come forward with evidence of a contractual agreement between itself and Applicant S&K Warbasse Pharmacy.

Here, Respondent has submitted a copy of the agreement between itself, the primaries for the Applicant and those primaries on behalf of Applicant S&K Warbasse Pharmacy. Insofar as Respondent has provided sufficient documentary evidence to demonstrate a valid agreement, the agreement will be leading for determination on payment.

The contractual agreement indicated in section 6.C:

"Mandatory Generic, except if brand is expressly prescribed by a licensed practitioner (which shall not be suggested or encouraged) or the generic is not reasonably available

75% of the reimbursable amount pursuant to the Pharmacy Fee Schedule, including any applicable ground rules."

Respondent argued that the amount paid, \$1065.29, was 75% of the amount billed, as prescribed by the settlement agreement. Applicant argued that the Settlement agreement indicated payment should be made at 75% of the fee schedule amount, which was the amount billed in this matter. Respondent has done nothing to substantiate the claim that the Applicant billed over the fee schedule. Accordingly, after a careful review of the records and consideration of the parties' oral arguments, I find that Respondent offered no objective evidence in support of its reductions and therefore failed to sustain its fee schedule denial. I therefore find for the Applicant. Reimbursement as requested is due and owing herein in the full amount of \$360.10.

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
	S&K Warbasse Pharmacy	02/17/23 - 02/17/23	\$360.10	Awarded: \$360.10
Total			\$360.10	Awarded: \$360.10

B. The insurer shall also compute and pay the applicant interest set forth below. 04/18/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to no minimum and a maximum of \$1360.00. However, if the benefits and interest awarded thereon is equal to or less than the

Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6 (b).

- 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 Nassau

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

08/05/2024
(Dated)

Bryan Hiller

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:
c26c4dd41f68ef288282af62b39ba798

Electronically Signed

Your name: Bryan Hiller
Signed on: 08/05/2024