

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Modern Remedies LLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1291-1064

Applicant's File No. DK22-317580

Insurer's Claim File No. 1121738-02

NAIC No. 16616

ARBITRATION AWARD

I, Kenneth Rybacki, 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 09/09/2024
Declared closed by the arbitrator on 09/09/2024

Jennifer Raheb, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Justin Manzullo, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,914.25**, 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 Applicant's claim arising from an 11/7/22 accident for pharmaceuticals provided to K.S. on 11/17/22 is ripe for determination.

4. Findings, Conclusions, and Basis Therefor

This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument. No

submissions following the close of the record on 5/1/23 were admitted, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."

This action for the payment of a claim for pharmaceuticals provided on 11/17/22 arises from an 11/7/22 accident. The record is devoid of any proof that the claim was paid or denied in whole or in part.

Applicant submitted proof of mailing of the claim to show that the same had ripened into a justiciable controversy at the time of filing. Proof of actual mailing or proof of a standard operating or office procedure designed to ensure that items are properly addressed and mailed can create a rebuttable presumption that the addressee received the items mailed, see, Tracy v. William Penn Life Ins. Co., 234 A.D.2d 745. Applicant submits a mailing log indicating that the claim was received by a Brooklyn N.Y. Postmaster on 11/23/22. The mailing was addressed to Respondent's claims office in Freeport, N.Y. I find this proof sufficient to create a presumption of receipt by the Respondent on 11/28/22, see CPLR 2103. Applicant is accordingly awarded the amount it seeks on this claim with statutory interest in accordance with Ins. L. Sec. 5106 from 12/28/22. Although counsel disputes the charges, the admitted record is devoid of any expert or other competent proof to support any reductions. Respondent thus failed to meet its prima facie burden of showing that Applicant's charges were in excess of those permissible under applicable fee schedules, e.g., Pro-Align Chiropractic, P.C. v. State Farm Mutual Automobile Ins. Co., 59 Misc.3d 1201(A). An insurer fails to establish the existence of an issue of fact with respect to a defense that fees charged were excessive and not in accordance with the Workers' Compensation fee schedule in the absence of proof establishing the defense. St. Vincent Medical Care, P.C. v. Country Wide Ins. Co., 26 Misc.3d 146(A).

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
	Modern Remedies LLC	11/17/22 - 11/17/22	\$1,914.25	Awarded: \$1,914.25
Total			\$1,914.25	Awarded: \$1,914.25

B. The insurer shall also compute and pay the applicant interest set forth below. 12/28/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Statutory interest shall run from 12/28/22 to the date of payment by the Respondent.

C. Attorney's Fees

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

Attorney fees are awarded at 20% of the amount of first-party benefits awarded in the aggregate, plus interest, in accordance with the limitations set forth in 11 NYCRR 65-4.6.

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 Suffolk

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

09/12/2024
(Dated)

Kenneth Rybacki

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:
6027c0b2eaf1a14b931dc378b70f0986

Electronically Signed

Your name: Kenneth Rybacki
Signed on: 09/12/2024