

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a
East Tremont Medical Center
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No.	17-23-1329-0467
Applicant's File No.	N/A
Insurer's Claim File No.	3254P855T
NAIC No.	25178

ARBITRATION AWARD

I, Eylan Schulman, 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 08/30/2024
Declared closed by the arbitrator on 08/30/2024

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

Mitchell Feder, Esq., from Sarah C. Varghese & Associates f/k/a James F. Butler &
Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$13,915.94**, was AMENDED and permitted by the arbitrator at the oral hearing.

Amount in dispute amended to 0 because Applicant paid the proper rate for the services under the Fee Schedule. Claim is for attorney's fee only.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Whether Applicant's counsel is entitled to a statutory attorney fee for the bill at issue.

This is a claim for reimbursement for shoulder surgery performed on September 27, 2023, following an automobile accident which occurred on August 15, 2023.

Respondent untimely paid the bill at issue - after Applicant retained an attorney for purposes of collections of the claim.

4. Findings, Conclusions, and Basis Therefor

The findings herein are based on documentary evidence set forth in the ADR Center submitted by the parties prior to the date of hearing and oral argument at the hearing.

An Applicant establishes a *prima facie* showing of entitlement to No-Fault benefits under Article 51 of the Insurance Law by submitting proof that it submitted a claim setting forth the fact and the amount of the loss sustained and payment of No-Fault benefits was overdue. A.B. Med. Servs., PLLC v. Liberty Mutual Ins. Co., 39 A.D.3d 779 (2d Dep't 2007).

It is undisputed that Applicant established its *prima facie* case of entitlement to first-party no-fault benefits by demonstrating it submitted a timely claim setting forth the fact and the amount of the loss sustained and payment for the claim has not been made.

Respondent submitted payment for the bill at issue more than 30 days after receiving the claim and after Applicant retained an attorney for purposes of claims-collection. The claim was paid with interest. Applicant argues it is entitled to a statutory attorney fee pursuant to 11 NYCRR 65-3.10(a).

11 NYCRR 3.10(a) states:

An applicant or an assignee shall be entitled to recover their attorney's fees, for services necessarily performed in connection with securing payment, if a valid claim or portion thereof was denied or overdue. If such a claim was initially denied and subsequently paid by the insurer, the attorney's fee shall be \$80. If such a claim was overdue but not denied, the attorney's fee shall be equal to 20 percent of the amount of the first-party benefits and any additional first-party benefits plus interest payable pursuant to section 65-3.9 of this subpart, subject to a maximum fee of \$60.

Applicant argues that since the bill at issue was overdue and subsequently paid after Applicant's counsel was retained for claims collection, it is entitled to an attorney's fee of \$60.00 for the bill.

After consideration of the applicable Regulation, I find that Applicant is entitled to the statutory attorney fee since the plain language of the statute is clear and unambiguous. The claim was initially overdue before payment was made. Accordingly, the attorney's

fee shall be equal to the maximum fee of \$60. Based on the foregoing, Applicant is awarded a \$60.00 attorney's fee, for the reasons stated.

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 interest only

A. Attorney's Fees

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

Applicant is awarded a \$60.00 attorney's fee for the reasons set forth above.

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

09/30/2024
(Dated)

Eylan Schulman

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
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Electronically Signed

Your name: Eylan Schulman
Signed on: 09/30/2024