

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Leonaum Pharmacy Inc d/b/a Advantage
Pharmacy
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No.	17-23-1303-1767
Applicant's File No.	FL23-60489
Insurer's Claim File No.	64396
NAIC No.	24309

ARBITRATION AWARD

I, Anne Malone, 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 11/04/2024
Declared closed by the arbitrator on 11/04/2024

Nancy Orlowski, Esq. from Field Law Group, P.C. participated virtually for the Applicant

David Tetlak, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,703.18**, 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 35 year old EIP was involved in a motor vehicle accident on December 6, 2016; claimed related injury and received Diclofenac gel and Lidocaine ointment provided by the applicant on February 28, 2023.

The applicant submitted a claim for this topical prescription medication, payment of which was denied by the respondent because the bill at issue was not submitted within 45 days of the date of service.

The issue to be determined at the hearing is whether the applicant established its *prima facie* entitlement to no fault benefits for claim at issue.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the untimely submission of the bill/bills at issue if such defense is not raised in a timely denial. See New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept. 2001.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that late submission of the bill/bills will be excused where the applicant can provide a reasonable justification of the failure to timely submit the bill/bills. 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007.)

The respondent's denial was based on late submission of the bill at issue. The subject bill for services rendered on February 28, 2023 was dated April 11, 2023. According to the NF-10 the bill was received April 17, 2023 and the denial, which contained the requisite "reasonable justification" language was dated May 10, 2023.

Based on the relevant case law, it is not the date of the insurer's receipt of a claim which determines whether the submission is untimely, but rather the date of the applicant's mailing of the claim form. See New York Diagnostic Medical Care, P.C. v. Geico Casualty Ins. Co., 35 Misc.3d 131(A) (App Term 2d, 11th & 13th Dists. 2012.)

Although the regulations do not define what it means for proof of claim to be submitted, mailing the proof of claim to the insurer within 45 days satisfies the requirement. See Compass Med., P.C. v. Fiduciary Ins. Co. of Am., 51 Misc.3d 66 (App Term, 2d, 11th & 13th Dists. 2016.)

In addition, a certificate of mailing stamped by the United States Postal Service is "objective proof of mailing." Hertz Corp. v. Active Care Med. Supply Corp., 124 A.D.3d 411 (1st Dept. 2015.)

In the instant matter, the applicant submitted sufficient proof that the claim at issue was sent to the respondent within the requisite 45-day period.

Based on the foregoing, the applicant has established its *prima facie* entitlement to no-fault benefits for the claim at issue.

Accordingly, the applicant is awarded \$2,703.18 in disposition of this claim.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no fault benefits presently before this Arbitrator.

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
	Leonaum Pharmacy Inc d/b/a Advantage Pharmacy	02/28/23 - 02/28/23	\$2,703.18	Awarded: \$2,703.18
Total			\$2,703.18	Awarded: \$2,703.18

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/09/2023 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." See 11 NYCRR §64-3.9(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. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. 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 was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

- C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 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 CT
SS :
County of Fairfield

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

11/11/2024
(Dated)

Anne Malone

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:
0c6a272fd116ab688549b5389585557c

Electronically Signed

Your name: Anne Malone
Signed on: 11/11/2024