

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RGV Medical Equipment Corp
(Applicant)

- and -

Affirmative Direct Insurance Company
(Respondent)

AAA Case No. 17-24-1351-6254

Applicant's File No. 178327

Insurer's Claim File No. AD22100301

NAIC No. 10413

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 11/18/2024
Declared closed by the arbitrator on 11/18/2024

Dimitry Joffe, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Jagriti Khurana, Esq. from *Abrams Fensterman, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,524.77**, 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 21 year old EIP reported involvement in a motor vehicle accident on September 17, 2022; claimed related injury and received various items of durable medical equipment provided by the applicant from September 30, 2022 to December 27, 2022.

The applicant claims to have submitted three bills for dates of service September 30, 2022 (\$1,151.04), December 23, 2023 (\$502.63) and December 27, 2023 (\$1,840.23) for this claim. It is the respondent's contention that the bills for these dates of services were not received.

The issue to be determined at the hearing is whether the applicant sustained its burden to establish a *prima facie* case of entitlement to no-fault benefits for the bill 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.

To support its contention that the bill was not timely received, the respondent submitted an affidavit from Sharzil Rahman, a no fault claims adjuster with knowledge of the respondent's business practices who attested to non-receipt of the bills for dates of service September 30, 2022, December 23, 2023 and December 27, 2023.

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. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

The applicant has met its initial burden to establish that the "prescribed statutory billing forms had been mailed and received by the respondent" by submitting certificates of mailing from the U.S. Post Office to establish that the bills at issue were timely mailed.

Under these circumstances, the applicant has established with evidentiary proof its *prima facie* entitlement to no fault benefits for the claims at issue.

Accordingly, the applicant is awarded \$3,493.90 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
	RGV Medical Equipment Corp	09/30/22 - 09/30/22	\$1,151.04	Awarded: \$1,151.04
	RGV Medical Equipment Corp	12/23/22 - 12/23/22	\$502.63	Awarded: \$502.63
	RGV Medical Equipment Corp	12/27/22 - 12/27/22	\$1,150.00	Awarded: \$1,150.00
	RGV Medical Equipment Corp	12/27/22 - 12/27/22	\$690.23	Awarded: \$690.23
	RGV Medical Equipment Corp	11/02/22 - 11/02/22	\$30.87	Denied

Total	\$3,524.77	Awarded: \$3,493.90
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- B. The insurer shall also compute and pay the applicant interest set forth below. 06/11/2024 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.

11/26/2024
(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:
08ed68fedb6531afb7e882e9c12c22b2

Electronically Signed

Your name: Anne Malone
Signed on: 11/26/2024