

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1348-0229

Applicant's File No. AR24-24095

Insurer's Claim File No. 3252P571X

NAIC No. 25178

ARBITRATION AWARD

I,Carolynn Terrell-Nieves, 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: Claimant

1. Hearing(s) held on 11/26/2024
Declared closed by the arbitrator on 11/26/2024

Alek Beynenson,Esq. from The Beynenson Law Firm, PC participated virtually for the Applicant

Craig Stabenau,Esq., from Sarah C. Varghese & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,951.42**, 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

Applicant submitted a bill in the amount of \$1,951.42 for date of service 7/5/2023 thru 11/28/23. The bill relates to PT and OVs performed on the claimant, an 18-year-old male, involved in an accident on 6/20/2023. The bill was denied payment by respondent on the following basis:

In accordance with this policy, you do not qualify for coverage as you do not meet the definition of an Eligible Injured Person. This matter is linked to **17-24-1349-6225** which I determined no coverage.

4. Findings, Conclusions, and Basis Therefor

I have completely reviewed all timely submitted documents contained in the ADR Center record maintained by the American Arbitration Association and considered all oral arguments. No additional documents were submitted by either party at the hearing. No witnesses testified at the hearing.

Analysis

Applicant has established its prima facie entitlement to reimbursement for no fault benefits as a matter of law based upon the submission of a properly completed claim form setting forth the amount of the loss sustained and that payment is overdue. *Mary Immaculate Hospital v. AllState Insurance Company*, 5 AD 3d 742, (2nd Dept. 2004).

I find that it is difficult to argue that this denial apprised the applicant with a "high degree of specificity of the ground or grounds on which the disclaimer is predicated." See, *General Accident Ins. Group v. Cirucci*, 46 N.Y.2d 862, 864, 414 N.Y.S.2d 512, 514 (App. Div. 2 Dept. 1978).

The language contained in this denial could not be any vaguer.

Respondent's counsel submitted its brief dated 7/29/2024 (3 months prior to this hearing) that it is learned the respondent believed the claimant to be occupying a motorcycle at the time of the accident which is an exclusion of its policy.

Putting aside for a moment the specificity issue, which in and of itself is enough to find respondent's denial defective, we will entertain counsel's more specific claim.

Applicable Law: 11 NYCRR Section 65-1.1, defines an Eligible Injured Person as follows: Subject to the exclusions and conditions set forth below, an eligible injured person is: (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle; (b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle; (c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or (d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle.

Section 123 of the New York Vehicle and Traffic Law ("VTL") defines a motorcycle as: Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor. A motorcycle is not a "motor vehicle" under the VTL (see: *People v. Asselta*, 1 A.D.2d 960, App. Div., 2 Dept., 1956). Section 121-B of the Vehicle & Traffic Law defines a limited use motorcycle as follows: A limited use vehicle having only two or three

wheels, with a seat or saddle for the operator. A limited use motorcycle having a maximum performance speed, of more than thirty miles per hour but not more than forty miles per hour shall be a class A limited use motorcycle. A limited use motorcycle having a maximum performance speed of more than twenty miles per hour but not more than thirty miles per hour, shall be a class B limited use motorcycle. [emphasis added]. A limited use motorcycle having a performance speed of not more than twenty miles per hour shall be a class C limited use motorcycle. Insurance Law §5103(a)(1) provides that an occupant of a motorcycle is not entitled to recover No-Fault benefits.

The exclusions set forth under 11 NYCRR 65-1.1, provide that occupants of motorcycles are excluded from first party No-Fault benefits. See: Insurance Law §5103 (a)(1) and (2).

Respondent submitted photos of what Respondent alleges the Applicant was driving. An Ebike which is listed on the police report in Respondents submission.

A prerequisite to receiving first-party No-Fault benefits is that the injured party's injuries and basic economic loss benefits sought, pursuant to Insurance Law 5102 and 5103 and 11NYCRR 65-11, arise from the use or operation of a covered motor vehicle. The rules that determine the respondent's liability under No-Fault are: (1) the accident must arise out of the inherent nature of the vehicle, (2) the accident arises within the territorial limits of the vehicle, and (3) the vehicle must produce the injury, proximate cause, and not merely contribute to the cause or condition that creates the injury.

Decision

From the facts before me, it is apparent that the injured-party is not an eligible person under the No-Fault Statutes. The burden of going forward on the issue of whether an insurance policy covers a particular accident falls upon the insurer (see, N.Y. Massage Therapy v. State Farm, 14 Misc. 3d 1231(A) 836 N.Y.S. 2d 494).

Accordingly, the applicant's claim is denied in its entirety.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

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

12/09/2024
(Dated)

Carolynn Terrell-Nieves

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:
e07259e44c1a1fc5592dfdb918c3c10c

Electronically Signed

Your name: Carolynn Terrell-Nieves
Signed on: 12/09/2024