

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

NYC Office Of The Comptroller
(Respondent)

AAA Case No. 17-24-1354-9124

Applicant's File No. AR24-24605

Insurer's Claim File No. 2022NF013784

NAIC No.

ARBITRATION AWARD

I, Rebecca Novak, 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 ["EV"]

1. Hearing(s) held on 12/16/2024
Declared closed by the arbitrator on 12/16/2024

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

Diana Rojas from NYC Office Of The Comptroller participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,821.12**, was AMENDED and permitted by the arbitrator at the oral hearing.
Applicant amended the amount in dispute to \$1,095.58 to reflect payments made and bills withdrawn.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills.

3. Summary of Issues in Dispute

Whether Applicant established entitlement to No-Fault insurance compensation for physical therapy performed to treat Assignor, a 57-year-old male, from June 15, 2023 to May 26, 2024, subsequent to being injured in a motor vehicle accident on March 30, 2022.

Whether Applicant established entitlement to No-Fault insurance compensation for 6 bills for which lacked corresponding denials of claim.

Whether Respondent's defense of policy exhaustion should be sustained.

4. Findings, Conclusions, and Basis Therefor

In this No-Fault insurance arbitration, Applicant is seeking as compensation \$1,095.58, for physical therapy performed from June 15, 2023 to May 26, 2024, to treat Assignor, a 50-year-old male, who was injured in a motor vehicle accident on March 30, 2022. This amount sought by Applicant reflects a reduction from the original amount sought when the arbitration was commenced. At the hearing, Applicant acknowledged payments made on five of the bills at issue and withdrew those bills from its claim. No denials were issued for the remaining bills but Respondent asserted at the hearing that the amount remaining for payment of No-Fault benefits was close to exhaustion.

Both parties appeared at the hearing via Zoom (Applicant by counsel, Respondent by representative), who presented oral argument and relied upon documentary submissions. I have reviewed the submissions' documents contained in the American Arbitration Association's ADR Center as of the date of the hearing, said submissions constituting the record in this case.

Stipulations were entered into at the hearing, amongst which were that Applicant established a prima facie case of entitlement to No-Fault compensation for the amount it sought.

No evidence was presented at the hearing to support a fee schedule defense.

"[A] plaintiff demonstrates prima facie entitlement to summary judgment by submitting evidence that payment of no-fault benefits are overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501, 14 N.Y.S.3d 283, 286 (2015). I find that Applicant established its prima facie case for the bills remaining outstanding by stipulation as well as by proof of mailing via certificates of mailing submitted into the record.

Respondent failed to deny the claim and offered no defense for its failure to do so. Failure to establish timely denial of the claim results in preclusion of the defenses. Presbyterian Hospital in City of New York v. Maryland Casualty Co., 90 N.Y.2d 274, 660 N.Y.S.2d 536 (1997).

There was no evidence submitted by Respondent to refute Applicant's claim. However, at the hearing, Respondent's representative asserted that it is self-insured through the NYC Office of the Comptroller which provides \$50,000 in Mandatory Personal Injury Protection (PIP), i.e., No-Fault benefits, as required by statute. Respondent referred to the payment ledger and asserted that of the date of the hearing there was \$580.54 remaining to be paid on No-Fault benefits.

The general rule as stated in Hospital for Joint Diseases v. State Farm Mutual Automobile Ins. Co., 8 A.D.3d 533, 534 (2nd Dept. 2004) is that when an insurer has paid out the all monetary limits set forth in the policy its duty to pay under the contract ceases to exist.

Accordingly, the within arbitration claim is granted in the entirety of the amended amount but the amount to be paid is subject to the maximum amount available on the insurance policy for Assignor. This is notwithstanding anything to the contrary set forth below in the conclusion to this award. Any interest and attorney's fee shall be computed only on the actual payment made in the remaining No-Fault benefit paid. Further, if perchance the No-Fault portion of the policy is completely exhausted prior to the date payment would be made, then no payment of principal, interest, and an attorney's fee is due on this claim.

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.

		Claim	Amount	

Medical		From/To	Amount	Amended	Status
	Brooklyn Medical Practice, PC	06/08/23 - 06/29/23	\$362.77		Withdrawn with prejudice
	Brooklyn Medical Practice, PC	08/04/23 - 08/29/23	\$235.48		Awarded: \$235.48
	Brooklyn Medical Practice, PC	09/05/23 - 09/28/23	\$261.85		Awarded: \$261.85
	Brooklyn Medical Practice, PC	10/05/23 - 10/30/23	\$235.48		Awarded: \$235.48
	Brooklyn Medical Practice, PC	11/10/23 - 11/13/23	\$67.28		Awarded: \$67.28
	Brooklyn Medical Practice, PC	12/06/23 - 12/28/23	\$100.92		Awarded: \$100.92
	Brooklyn Medical Practice, PC	01/12/24 - 01/29/24	\$194.57		Awarded: \$194.57
	Brooklyn Medical Practice, PC	02/05/24 - 02/23/24	\$67.28		Withdrawn with prejudice
	Brooklyn Medical Practice, PC	03/01/24 - 03/04/24	\$67.28		Withdrawn with prejudice
	Brooklyn				Withdrawn

	Medical Practice, PC	04/29/24 - 04/29/24	\$33.64		with prejudice
	Brooklyn Medical Practice, PC	05/03/24 - 05/26/24	\$194.57		Withdrawn with prejudice
Total			\$1,821.12		Awarded: \$1,095.58

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/03/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The date set forth above is the date when the American Arbitration Association received the arbitration request. However, note the following.

"Pursuant to Insurance Law §5106(a), interest accrues on overdue no-fault insurance claims at a rate of 2% per month. A claim is overdue when it is not paid within 30 days after a proper demand is made for its payment [citations omitted]." LMK Psychological Services, P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009). In the instant case, no specific denial was ever issued, per the record. However, as noted above, Applicant did mail the bill to Respondent on a date certain. It was presumptively received five days later (next business day if the fifth day falls on a weekday or legal holiday). The date payment became overdue is the 30th date after the bill was presumptively received. Therefore, the interest accrual date shall be the date payment became overdue, using the said date calculations. The end date for the period of interest shall be the date of payment of the claim. Interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. See 11 NYCRR 65-3.9, 65-4.5(s)(3).

C. Attorney's Fees

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

Applicant is entitled to an attorney's fee pursuant to Insurance Law §5106(a). After calculating the sum total of the first-party (No-Fault) benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, subject to the following limitations: In the event the above filing date was prior to Feb. 4, 2015, the attorney's fee is subject to a minimum of \$60.00 and a maximum of \$850.00, per 11 NYCRR 65-4.6(e). In the event the above filing date was on or after Feb. 4, 2015, the attorney's fee is subject to a maximum of \$1,360.00,

per 11 NYCRR 65-4.6(d). In the event the above filing date was on or after Feb. 4, 2015 and first-party (No-Fault) benefits are awarded to more than one Applicant herein, the attorney's fee shall be calculated separately for each Applicant, each Applicant's attorney fee being subject to the \$1,360.00 maximum.

- 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 Nassau

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

12/17/2024
(Dated)

Rebecca Novak

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:
35af089ba3157967e31e337c39a608a5

Electronically Signed

Your name: Rebecca Novak
Signed on: 12/17/2024