

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Complete Medical Care PC
(Applicant)

- and -

New York City Transit Authority
(Respondent)

AAA Case No. 17-23-1326-1533
Applicant's File No. RFA23-323767
Insurer's Claim File No. BU2021032500210
NAIC No. Self-Insured

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 12/16/2024
Declared closed by the arbitrator on 12/16/2024

Alexander Mun, Esq. from Horn Wright, LLP participated virtually for the Applicant

Laura Weiss, Esq. from Foley, Smit, O'Boyle & Weisman participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,242.92**, 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 37 year old EIP reported involvement in a motor vehicle accident on March 25, 2021; claimed related injury and underwent CT scans and x-rays of the left ankle provided by the applicant on May 13, 20-21 and June 29, 2021.

The applicant submitted a claim for these medical services, payment of which was denied by the respondent on the grounds that coverage for this claim is excluded based on the EIP's failure to provide responses to verify coverage.

The issue to be determined at the hearing is whether the respondent can establish its coverage defense.

4. Findings, Conclusions, and Basis Therefor

This 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.

The applicant provided services to the EIP based on his assertion that he sustained injuries based on his involvement in a motor vehicle accident which occurred on May 25, 2021.

The submissions include an NF-2 which indicates that the EIP was a passenger in an automobile.

The NF-10s state in pertinent part:

APPLICANT FAILED TO SUBMIT REQUESTED VERIFICATION
UNDER APPLICANT'S POSSESSION & FAILED TO PROVIDE
WRITTEN PROOF PROVIDING REASONABLE JUSTIFICATION
FOR THE FAILURE TO COMPLY W/IN 120 DAYS FROM THE
DATE OF REQUEST. DENIED 11 NYCRR 65-3.5 O.

The respondent contends that its only defense is that it had not received notice of claim as set forth in 11 NYCRR 65-2.4(a) and (b) and therefore has no liability to provide no-fault coverage.

The respondent submitted a legal analysis of its coverage defense and the exception from preclusion based on the difference between notice provision in 11 NYCRR 95-2.4 (self -insurers) and NYCRR 65-1.1 (insurers.)

The analysis states in pertinent part:

Absent a policy or contract of insurance, liability for no-fault benefits with Respondent arises by statute (because it is self-insured) and is not triggered nor may it be imposed where "written notice" is not provided.

Respondent's failure to timely deny a claim based upon a defense that notice was never provided, falls squarely in the "narrow" exception from

preclusion since the basis for the lack of coverage is a defense
"implicating

a coverage matter". Fair Price Med Supply Corp. v Travelers Indem. Co.,
10 N.Y.3d at 563, 860 N.Y.S.2d 471, 890 N.E.2d 233.

Based on the foregoing,

The only way NYCT (a self-insurer) becomes obligated to provide
no-fault coverage and hence comply with the Regulations (including its
timeframes

is when a passenger or pedestrian who is injured as a result of the use or
operation of one of its buses, provides written notice of claim (e.g. an
NF-2),

not proof of claim (e.g. a bill).

It is not until notice is provided that compliance with the No-Fault
Regulations

is required. It is incumbent upon the injured party to provide notice in
order to impose the statutory obligation to provide no-fault coverage
upon Respondent.

The brief describes in detail the respondent's arguments related to this
claim.

It states that no-fault benefits provided by the Transit Authority arise
from a

statutory basis if a bus passenger or pedestrian is injured as a result of the
use

or operation of a Transit Authority vehicle and they are not covered by a
household policy.

Based upon the information contained in the NF-2 received by
respondent,

"it was unclear as to whether the claimant was a passenger in a bus
owned

and operated by respondent and whether the injuries arose from the use or

operation of such a bus. Without this information, respondent claimed to be

unable to determine whether the claimant is an 'eligible injured person' for

purposes of no-fault coverage."

In the case of a self-insurer, coverage is not contemplated nor may liability for no-fault benefits be imposed until sufficient notice is provided by the eligible injured person within 30 days of the accident or by providing reasonable justification for the failure to comply.

Without "notice" there can be no coverage. And that "notice" must provide sufficient information to allow the insurer to determine whether it bears liability to provide coverage.

It is undisputed that the respondent is self-insured and there is no policy of insurance. Therefore, the terms of coverage are imposed by statute. See, Ins. Law § 5103 (a)(1); 11 NYCRR 65-2.2 (j); and 11 NYCRR 65-2.3(g.)

In the instant matter, the respondent denied this claim based on the lack of a response to verification requested within 120 days from the date of the request. According to the NF-10, the bills for date of service May 13, 2021 were dated June 4, 2021, received by the respondent on June 8, 2021 and the denials were dated August 9, 2023.. The bills for date of service June 29, 2021 were dated August 2, 2021 and were received by the respondent on August 5, 2021. The denials were dated August 18, 2021.

The applicant submitted an NF-2 which was incomplete. The applicant sent a copy of the NF-2 with a cover letter on November 1, 2021, but the submissions do not include any further request for additional information to verify this claim.

Taking into consideration the facts of this particular claim and the discussion between the parties at the hearing regarding dismissal of this claim without prejudice, I agree with their request.

Accordingly, the claim is dismissed without prejudice.

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 claim is DISMISSED without prejudice

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.

01/09/2025
(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:
24316675b0e3132b4d8b139e78898b59

Electronically Signed

Your name: Anne Malone
Signed on: 01/09/2025