

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Franklin Square Services Inc.
(Applicant)

- and -

State Farm Fire & Casualty Company
(Respondent)

AAA Case No.

17-24-1353-4786

Applicant's File No.

GM24-744844,
GM24-744868

Insurer's Claim File No.

52-49H8-04C

NAIC No.

25143

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 12/23/2024
Declared closed by the arbitrator on 12/23/2024

John Fagan, Esq. from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

Robert Rehr, Esq. from Bruno Gerbino & Soriano LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,758.14**, 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 27 year old EIP (EH) reported involvement in a motor vehicle accident on April 21, 2023; claimed related injury and received a knee orthosis on December 223, 2023, rental of a cold compression device and CPM unit with pad provided by the applicant from December 23, 2023 to January 19, 2024.

The applicant submitted a claim for this durable medical equipment, payment of which was denied by the respondent on the grounds that there was no coverage for this claim/loss because the EIP's injuries were not causally related to the subject accident.

The issues to be determined at the hearing are:

Whether the assignor's injuries arose out of the use or operation of a motor vehicle.

Whether the respondent established that its denial was proper.

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 EIP alleged to have been involved in a motor vehicle accident on April 21, 2021. The respondent denied the claim for a lack of coverage based on the EUO testimony of the parties involved in the subject accident.

The denial states in pertinent part:

All New York No-Fault are denied based upon the Company's investigative finding that the loss was not an accident and the injured party [EIP] made false statement with the intent to conceal or misrepresent material facts or circumstances related to this loss in furtherance of an Insurance fraud scheme. Additionally, the injured [EIP] does not meet the definition of an eligible injured person under The Mandatory Personal Injury Protection Endorsement because he (sic) was not injured as a result of the use or operation of a vehicle insured with State Farm and the claimed injuries do not arise out of a covered accident.

The submissions do not identify the specific testimony or the pages/lines of the EUO transcript upon which the respondent relied to make this determination. At the hearing, the attorney for the respondent stated that, the basis of the denial included conflicting details regarding the details of the happening of the accident, the type of vehicle involved and the relationship between the parties and the owner of the subject vehicle.

There were several hearings involving the subject accident, which involved three different EIPs (FC driver) (EH passenger) and DH passenger.) I have reviewed the transcripts of each of the EIPs EUO testimony. FC the driver of the subject vehicle stated that he and DH were planning to drive to Long Island to go out to dinner. This was confirmed by DH. EH stated that she was going with FC and DH to Long Island to be introduced to someone who she might have asked to braid her hair.

The EUO testimony of FC was that he was going to Hempstead, LI to visit a friend, DH said she and FC had decided to go to Long Island for dinner and EH said she was going to meet someone who might do her hair.

The testimony of DH was very clear and concise. The testimony of FC and EH was evasive, confusing and they had to be asked the same questions numerous times and eventually provided conflicting information. The testimony of DH was the most convincing and straightforward.

However, the testimony does indicate that the EIPs were involved in a motor vehicle accident in Hempstead, Long Island on April 21, 2023 and the police report confirms this fact.

There was no submission of an SIU affidavit or other evidence to further support the denial of this claim based on fraud, material misrepresentation of facts and whether the EIP was not injured as a result of the use or operation of a vehicle insured with State Farm and the claimed injuries do not arise out of a covered accident.

Based on the submissions, including the EUO testimony of all of the parties and the police report, the respondent failed to establish its coverage defense regarding the involvement of this EIP (EH) in the subject accident. There was no denial based on a lack of medical necessity so coverage was the only issue before me.

Under these circumstances, the respondent failed to establish that its denial was proper.

Accordingly, the applicant is awarded 2,758.14 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
	Franklin Square Services Inc.	12/23/23 - 01/19/24	\$548.14	Awarded: \$548.14
	Franklin Square Services Inc.	12/23/23 - 01/19/24	\$2,210.00	Awarded: \$2,210.00
Total			\$2,758.14	Awarded: \$2,758.14

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/09/2024 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.

01/14/2025

(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:
e8beee7e002bc7dd6a0eb771fdcc4c30

Electronically Signed

Your name: Anne Malone
Signed on: 01/14/2025