

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1352-3174

Applicant's File No. ACT24-180885

Insurer's Claim File No. 3254T332H

NAIC No. 25178

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 01/06/2025
Declared closed by the arbitrator on 01/06/2025

Jared Mallimo, Esq. from The Licatesi Law Group, LLP participated virtually for the Applicant

Crystal Taylor, Esq. from Goldberg, Miller and Rubin, P.C. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,496.22**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$3,710.85 to conform to the appropriate fee schedule. The respondent did not agree to this amended amount.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 40 year old EIP reported involvement in a motor vehicle accident on February 12, 2024; claimed related injury and underwent office visits, prolonged E/M and trigger point injections provided by the applicant on April 24, 2023 and June 23, 2024.

The applicant submitted a claim for these medical services. Payment of the bill for date of service April 24, 2024 was delayed pending responses to requests for EUOs. The respondent contends that this bill was filed prematurely while timely demands for an EUO of the EIP were pending.

The applicant contends arbitration was properly filed on June 17, 2024 since there was no outstanding verification at that time.

The respondent did not acknowledge receipt of the bill for services rendered on June 20, 2024 and June 23, 2024. The submissions do not include a denial or payment for this bill.

The respondent asserted a fee schedule defense.

The issues to be determined at the hearing are:

Whether the respondent established that the claim for date of service April 24, 2024 and April 27, 2024 is premature.

Whether the applicant established its *prima facie* entitlement to no fault benefits for services rendered on June 20, 2024 and June 23, 2024.

Whether the respondent established its fee schedule defense.

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.

EUO of EIP

This applicant filed this claim for arbitration on June 17, 2024. The claim originally concerned services rendered on April 24, 2024 and April 27, 2024. On August 9, 2024 the AR-1 was amended to include a claim for dates of service June 20, 2024 and June 23, 2024.

It is the respondent's burden to prove that the bills in question were properly denied. Under 11 NYCRR 65-1.1, which prescribes the No-Fault Mandatory Personal Injury Protection Endorsement which must be included in all owners policies of motor vehicle liability insurance issued in New York, the "Conditions" section of the endorsement contains a "Proof of Claim" provision which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same..."

If the respondent requires an EUO of the EIP it has 15 business days after receipt of proof of claim in which to send correspondence requesting the examination under oath. If the party fails to attend, within 10 calendar days of the no-show the insurer must contact the party from whom the EUO is requested to give the party a second opportunity to attend.

Based on the submissions, the respondent attempted to the EUO of the EIP and submitted letters to the EIP with proof of mailing dated May 17, 2024, June 5, 2024 and July 8, 2024 for EUO scheduled on June 4, 2024, June 24, 2024 and July 24, 2024, respectively.

The scheduling letters were proper as to form and there is no evidence submitted to establish that the letters were improper in any way, or that they were sent to an improper address. The EUO of the EIP was held on July 24, 2024.

Based on the foregoing, the claim was not ripe for arbitration until the EUO was completed on July 24, 2024.

Under these circumstances, the respondent has established that the claim filed on June 17, 2024 was premature.

Therefore, the this claim for dates of service April 24, 2024 and April 27, 2024 is dismissed without prejudice.

Non-receipt of bill for dates of service June 20, 2024 and June 23, 2024

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.)

In support of its *prima facie* case, the applicant submitted sufficient proof to mailing to establish that the bill at issue was timely mailed.

I find that applicant established its *prima facie* case of entitlement for no-fault compensation for the claim at issue.

The respondent did not submit any evidence from someone with personal knowledge to support its contention that the bill at issue was not received.

Therefore, an award will be issued in favor of the applicant for dates of service June 20, 2024 and June 23, 2024 pursuant to the appropriate fee schedule.

Fee Schedule

To prevail in a fee schedule defense, the respondent must demonstrate by competent evidentiary proof that applicant's claims were in excess of the appropriate fee schedules, or otherwise respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Co., 11 Misc.3d 145(A) (App. Term 1st Dept. 2006.)

An insurer fails to raise a triable issue of fact with respect to a defense that the fees charged were not in conformity with the Workers' Compensation fee schedule when it does not specify the actual reimbursement rates which formed the basis for its determination that the claimant billed in excess of the maximum amount permitted. See St. Vincent Medical Services, P.C. v. GEICO Ins. Co., 29 Misc.3d 141(A), 907 N.Y.S.2d 441 (App. Term 2d, Dec. 8, 2010.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and often requires testimony and evidence beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the latter scenario and requires an expert's opinion.

The respondent did not support its fee schedule defense with an affidavit from a certified professional fee coder, medical professional or other expert.

The applicant submitted the affidavit of Michael Miscoe, CPC a certified professional coder who submitted a comprehensive review and analysis to support the total amount of \$3,710.85 (\$1,855.43 for each bill) the amended amount for the services at issue.

No payment was received for dates of service June 20, 2024 and June 23, 2024 and the bill was denied.

This claim for this bill was submitted in an amended AR-1 on August 9, 2024.

Accordingly, the applicant is awarded \$1,855.43 in disposition of the claim for dates of service June 20, 2024 and June 23, 2024 and the remainder of 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Atlantic Medical & Diagnostic PC	04/24/24 - 04/27/24	\$2,748.11	\$1,855.42	Dismissed without prejudice

	Atlantic Medical & Diagnostic PC	06/20/24 - 06/23/24	\$2,748.11	\$1,855.43	Awarded: \$1,855.43
Total			\$5,496.22		Awarded: \$1,855.43

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/09/2024 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.

01/21/2025

(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:
b91bed88e98d2d27ca543304b3926637

Electronically Signed

Your name: Anne Malone
Signed on: 01/21/2025