

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

SMK Pharmacy Corp d/b/a Nature's First LTC & Compounding (Applicant)	AAA Case No.	17-24-1364-6946
	Applicant's File No.	N/A
	Insurer's Claim File No.	686878
- and -	NAIC No.	Self-Insured

MVAIC  
(Respondent)

**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 01/22/2025  
Declared closed by the arbitrator on 01/22/2025

Marc Schwartz, Esq. from Marc L. Schwartz P.C. participated virtually for the Applicant

Tracy Bader Pollack, Esq. from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$393.49**, 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 33 year old EIP was involved in a motor vehicle accident on October 13, 2022; claimed related injury and received Diclofenac gel provided by the applicant on November 1, 2022.

The applicant submitted a claim for this prescription medication, payment of which was denied by the respondent because the bill at issue was not submitted within 45 days of the date of service.

**The issue to be determined at the hearing is whether the applicant established its *prima facie* entitlement to no fault benefits from this respondent for claim at issue.**

#### 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.

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. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the untimely submission of the bill/bills at issue if such defense is not raised in a timely denial. See New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that late submission of the bill/bills will be excused where the applicant can provide a reasonable justification of the failure to timely submit the bill/bills. 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2<sup>nd</sup> and 11<sup>th</sup> Jud. Dists. 2007.)

The respondent's denial was based on late submission of the bill at issue. The subject bill for services rendered on November 1, 2022 was dated January 12, 2023. According to the NF-10 the bill was received on January 17, 2023 and the denial, which contained the requisite reasonable justification" language was dated January 24, 2023.

The applicant submitted an affidavit by Alex Kozhin, the medical biller for the applicant with personal knowledge that the bill at issue was originally timely submitted to State Farm Insurance on November 26, 2022. The applicant was subsequently advised that the correct carrier for this claim was MVAIC and resubmitted the bill to MVAIC on January 11, 2023. The applicant provided evidence of mailing this bill on January 11, 2023.

The affidavit, proof of mailing and other documents were first submitted on January 18, 2025 4 days prior to this hearing. In addition, the affidavit did not indicate the date that the applicant was first notified that State Farm was not the correct insurer and did not explain the lapse of two months before the claim was submitted to MVAIC.

At the hearing, the respondent objected to consideration of these late submissions and I did not consider them.

Under these circumstances, the respondent has established that the bill for the services at issue was submitted more than 45 days after the date of service and the applicant has not established its *prima facie* entitlement for no fault benefits for the claim at issue.

**Accordingly, the claim is denied with 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 DENIED in its entirety

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.

01/23/2025  
(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:**  
b263776a34a4063bc3208c2f5bef94e6

### Electronically Signed

Your name: Anne Malone  
Signed on: 01/23/2025