

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

AKE Services, Inc. , Viotek Med Supplies Inc (Applicant)	AAA Case No.	17-24-1363-8762
- and -	Applicant's File No.	3320405
	Insurer's Claim File No.	AB949546741
Liberty Mutual Fire Insurance Company (Respondent)	NAIC No.	23035

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 01/13/2025
Declared closed by the arbitrator on 01/13/2025

Stacy Mandel Kaplan, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Cheryl Krzywicki from Liberty Mutual Fire Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,478.89**, 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

This claim involves two different applicants. The 24 year old EIP reported involvement in a motor vehicle accident on January 16, 2024; claimed related injury and received a cold compression device provided on June 14, 2024 and rental of a shoulder CPM with sheepskin pad provided by applicant AKE Services, Inc. from June 14, 2023 to July 11, 2024 and a shoulder orthosis provided by applicant Viotek Med Supplies on June 12, 2024.

The applicant submitted a claim for this durable medical equipment (DME). The respondent contends that it did not provide New York no-fault coverage for the

vehicle involved in this accident on the date of this loss and that the applicant has no standing to bring this action in New York.

The issue to be determined at this hearing is whether the applicant has standing to bring this action in this forum in New York.

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.

The respondent contends that New York is not the proper venue for the claim at issue because it involves a New Jersey resident driver of a vehicle registered in New Jersey and therefore the arbitration has been filed in the incorrect venue. The applicant argued that New York is the appropriate jurisdiction since the accident occurred in New York.

EIP resides in New Jersey and the vehicle at issue is registered there. However, the medical treatment was provided in New York and the respondent conducts business in New York.

Although the underlying insurance policy was issued in New Jersey for a vehicle registered in that state, New York's "deemer" statute (Ins. Law § 5017), which provides that every insurer authorized to transact business in this New York shall include in its policies coverage to satisfy this state's financial security requirement to provide for payment of first party benefits in the amount of \$50,000 when the vehicle covered by such policy is used or operated here, is applicable as the accident took place in New York.

After a review of the evidence submitted, I find that the respondent failed to establish that this forum is not the proper venue for resolution of this dispute and that the applicant had standing to bring this action in New York.

Accordingly, the applicant is awarded \$3,478.89 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
	AKE Services, Inc.	06/14/24 - 07/11/24	\$892.82	Awarded: \$892.82
	AKE Services, Inc.	06/14/24 - 06/14/24	\$2,475.00	Awarded: \$2,475.00
	Viotek Med Supplies Inc	06/12/24 - 06/12/24	\$111.07	Awarded: \$111.07
Total			\$3,478.89	Awarded: \$3,478.89

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/04/2024 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.

02/04/2025
(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:
7e69a6a7cec0267858eccf87636d2383

Electronically Signed

Your name: Anne Malone
Signed on: 02/04/2025