

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Jordan Fersel, M.D.
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1360-3760

Applicant's File No. NA

Insurer's Claim File No. 52-38S6-93S

NAIC No. 25178

ARBITRATION AWARD

I, Regina Anzalone Kurz, 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: The injured party.

1. Hearing(s) held on 02/07/2025
Declared closed by the arbitrator on 02/07/2025

Roman Kulik, Esq. from Kulik Law Firm, PC participated virtually for the Applicant

Jason Egielski, Esq. from Sarah C. Varghese & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$87.80**, 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

No-Fault health benefits claimed for a consultation held with the injured party, identified in the record as a 33-year-old male, on February 9, 2024 following his involvement in an automobile accident on September 2, 2022. Respondent denied the claim in a timely fashion pursuant to the results of an Independent Medical Examination conducted by Dr. Vijay S. Sidhwani, DO on November 29, 2023. A fee schedule defense was also asserted.

4. Findings, Conclusions, and Basis Therefor

As per 11 NYCRR Section 65-4.2(3)(iii), often referred to as the "Rocket Docket," the written record is deemed closed upon receipt of the respondent's submissions OR the expiration of the time period set forth for same, 30 calendar days. **Documents received by the American Arbitration Association after the close of conciliation and marked "late" were not considered by the undersigned in making this Award.**

It is well-settled that a health care provider establishes its *prima facie* entitlement to No-Fault Benefits under Article 51 of the Insurance Law by offering proof that it submitted documentation setting forth the particulars of the claim to the insurer and that payment of same is overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 AD3d 742 (2nd Dept.2004); *Amaze Medical Supply v. Eagle Insurance*, 2 Misc. 3d 128A 784 NYS2d 918, 2003 N.Y. Slip Op. 251701U [App.Term, 2d & 11th Jud. Dists.]. I find that Applicant has met its *prima facie* threshold.

After a *prima facie* case has been presented, the claim must generally be paid or denied within 30 days, or it is "overdue," commencing the accrual of interest and attorney fees. See, N.Y. Ins. Law § 5106[a] (McKinney 2000); 11 NYCRR § 65-3.8(a)(1), *Presbyterian Hospital v. Maryland Cas. Co.*, 90 N.Y.2d 274, 660 N.Y.S.2d 536 (1997).

The burden now shifts to the insurer to show lack of medical necessity. See *Elm Medical P.C. v. American Home Assurance Co.*, 2003 Slip Op. 51357U 2003 N.Y. Misc. LEXIS 1337 [Civ. Ct., Kings Co., 2003]; *Fifth Ave. Pain Control Ctr. v. Allstate Ins. Co.*, 196 Misc. 2d 801, 766 NYS2d 748 [Civ. Ct., Queens Co., 2003].

In the case of an IME-based medical necessity defense, the examiner's report must set forth a sufficient factual basis and medical rationale for the conclusion that further services are not medically necessary. See *Ying E. Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App Term 2d & 11th Dists. Sept. 3, 2008) An IME report asserting that no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mut. Fire Ins Co.*, 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct., Nassau Co., May 29, 2008, Andrew M. Engle, J.).

Where a fee schedule defense has been asserted, it has been held that the insurer has the burden of coming forward with competent evidentiary proof to support its fee schedule reduction or denial. See, e.g., *Roberts Physical Therapy, P.C. v. State Farm Mutual Automobile Insurance Company*, 13 Misc.3d 172, 3006 N.Y. Slip Op. 26240 (N.Y. Civ. Ct. Kings Co. 2006). In the absence of such proof, a defense of noncompliance with the appropriate fee schedule cannot be sustained. *Continental Medical, P.C. v. Travelers Indemnity Company*, 11 Misc. 3d 145(A), 2006 N.Y. Slip Op. 50841(U) (App. Term 1st Dept. 2006).

However, where a plain reading is appropriate, an arbitrator is permitted to take judicial notice of the workers' compensation fee schedule. See, *Kingsbrook Jewish Med. Ctr. v.*,

Allstate Ins. Co., 61 A.D.3d 13, 20 (2d Dept. 2009); LVOV Acupuncture, P.C. v. Geico Ins. Co, 32 Misc.3d 144(A), 2011 NY Slip Op 51721(U) (App Term 2d., 11th & 13th Jud Dists. 2011); Natural Acupuncture Health, P.C. v. Praetorian Ins. Co, 30 Misc.3d 132(A), 2011 NY Slip Op 50040(U) (App Term, 1st Dept., 2011).

This is a claim for a consultation held with the injured party, identified in the record as a 33-year-old male, on February 9, 2024 following his involvement in an automobile accident on September 2, 2022.

Respondent denied the claim in a timely fashion pursuant to the results of an Independent Medical Examination conducted by Dr. Vijay S. Sidhwani, DO on November 29, 2023.

A fee schedule defense was also asserted.

The claim-specific denial stated, in pertinent part,

"In accordance with the Pain Management Independent Medical Examination performed by Vijay S. Sidhwani, D.O. on 11/29/2023, the injured party, [the injured party], is no longer in the need of any further Pain Management treatments. The injuries to the cervical/thoracic/lumbar spine, and left shoulder have all resolved. There is no medical need for any additional physical therapy, follow up examinations, massage therapy, injections, prescription medications, diagnostic testing, household help, durable medical equipment or special transportation. Therefore, all New York No-Fault Pain Management benefits will be denied effective January 3, 2024."

However, the merits of the defense were not reached due to a threshold issue involving the provider's notice of the IME-based benefit termination.

To wit, Applicant argued that the provider, who was known by the carrier to be treating this injured party prior to the date of service in issue herein, was not named on the global denial dated December 27, 2023. Counsel argued that, in lieu of such notice, the effective date termination of benefits as to his client would be April 4, 2024. Counsel explained that this is determined by the fact that the claim-specific denial is dated March 31, 2024 and, in adding the requisite five days for mailing allowed by the CPLR, Applicant's first notice is deemed to have been received on April 4, 2024. Any services rendered prior to that date are considered "pre-denial." I agree with counsel.

Upon careful consideration of the record, I find that the evidence favors Applicant as to matters of law and fact. In so doing, I find that the defense has not been sustained. Further, I take judicial notice of the fact that the services were billed at the proper fee scheduled rate.

Pursuant to the Regulations, the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall

not be necessary. The Arbitrator may question any party or witness or raise any issue that she deems relevant to rendering an Award that is consistent with the Insurance Law and the Regulations. 11 NYCRR Section 65-4.5 (o) (1).

All other issues in play which were not raised by the parties at the time of the hearing are considered waived and/or rendered moot by this decision.

Therefore, based upon the foregoing, Applicant is awarded No-Fault health benefits in the sum of \$87.80; interest pursuant to B below; attorneys' fees pursuant to C below; plus the return of Applicant's \$40.00 filing fee pursuant to D below.

This case is subject to the provisions as to attorney fees promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Interest is awarded from the date of filing, August 9, 2024, at the rate of two percent per month, not compounded, on a pro-rata basis.

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
	Jordan Fersel, M.D.	02/09/24 - 02/09/24	\$87.80	Awarded: \$87.80
Total			\$87.80	Awarded: \$87.80

- 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.

Interest is awarded from the date of filing, August 9, 2024, at the rate of two percent per month, not compounded, on a pro-rata basis.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

This case is subject to the provisions as to attorney fees promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-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 SC

SS :

County of Charleston

I, Regina Anzalone Kurz, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/10/2025
(Dated)

Regina Anzalone Kurz

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:
ee83db4d16fc0a0c0f029f13aeaa74b

Electronically Signed

Your name: Regina Anzalone Kurz
Signed on: 02/10/2025