

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ortho Flex Med Supply Inc.
(Applicant)

- and -

Liberty Mutual Insurance Company
(Respondent)

AAA Case No. 17-24-1369-4171

Applicant's File No. NA

Insurer's Claim File No. 0521003310005

NAIC No. 36447

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 02/18/2025
Declared closed by the arbitrator on 02/18/2025

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

Kerri Forte from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,793.84**, 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 64 year old EIP reported involvement in a motor vehicle accident on January 3, 2023; claimed related injury and received bilateral shoulder orthoses provided by the applicant on April 5, 2023.

The applicant claims to have submitted a bill for these medical services. It is respondent's contention that a bill for these services was not received.

The issue to be determined at the hearing is whether the applicant sustained its burden to establish a *prima facie* case of entitlement to no-fault benefits.

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.

Applicant's *Prima Facie* Case

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.)

The respondent contends that the bill for dates of service April 5, 2023 was never received and supports this contention with an affidavit from a claims representative with personal knowledge of the respondent's business practices and this particular claim.

In addition, the respondent argued at the hearing that according to the report of the examination of the EIP by Dr. Spataro, the EIP reported that he did not receive any durable medical equipment related to the injuries he sustained in the subject accident.

In support of its *prima facie* case, the applicant submitted an affidavit from Natela Pinkhasov attesting to the fact that she personally mailed the bill, testing report and a copy of the Assignment of Benefits for the bill for services rendered on April 5, 2023.

Also submitted by the applicant was a Priority Mail Shipment Confirmation and Acceptance Notice to Liberty Mutual Claims dated 05/11/23 which identified a bill in the amount of \$1,793.84 for services dated 04/05/23.

At the hearing, the applicant's attorney argued that the discrepancy between the affidavit and priority mail confirmation should not be considered and that the applicant was relying only on the affidavit. However, the affidavit, which was undated but was notarized on 12th day of February 2025, did not include specific information regarding the facility from which the bill was mailed or a copy of the record upon which Ms. Pinkhasov relied to refresh her recollection of the date on which she personally mailed the documents including the bill for services rendered on April 5, 2023.

Based on the foregoing, I find that applicant did not establish its *prima facie* case of entitlement for No-Fault compensation for its claim in the amount of \$1,793.84 for services rendered on April 5, 2023.

Since the applicant did not establish its *prima facie* case for this bill, the burden did not shift to the respondent.

Accordingly, the claim is dismissed 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.

02/20/2025
(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:
77b1c1969a92cdbdc5a09cc3f9c998f8

Electronically Signed

Your name: Anne Malone
Signed on: 02/20/2025