

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a
East Tremont Medical Center
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No.	17-24-1354-9380
Applicant's File No.	TLD24-1069615
Insurer's Claim File No.	055651703-03
NAIC No.	36447

ARBITRATION AWARD

I, Robyn McAllister, 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: Assignor

1. Hearing(s) held on 03/18/2025
Declared closed by the arbitrator on 03/18/2025

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

Shertona Solomon, Claims Representative from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$698.20**, 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

Whether Applicant's claim for providing anesthesia and nerve block injection associated with right shoulder surgery for Assignor (JA), a 62 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on December 7, 2023, is ripe for arbitration, where Respondent sought additional verification.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$698.20 for providing anesthesia and nerve block injection associated with right shoulder surgery on March 23, 2024 for Assignor (JA), a 62 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on December 7, 2023. Respondent did not issue a denial and instead sought additional verification.

This decision is based on the oral arguments of counsel or other representative at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's verification requests acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015).

At the hearing, Respondent argued that Applicant's claim was not ripe for arbitration since additional verification remained outstanding. I disagree.

As noted by the Court in *Island Life Chiropractic, P.C. v. Travelers Ins. Co.*, 2019 NY Slip Op. 51273(U) (App. Term, 2d, 11th & 13th Dists. 2019), "Where a no-fault insurer is relying on the defense that an action is premature because verification is outstanding, it is the defendant insurer's prima facie burden at trial to demonstrate (1) that verification requests were timely mailed and (2) that the defendant did not receive the requested verification (*see* 11 NYCRR 65-3.8 [a]; *Right Aid Med. Supply Corp. v State Farm Mut. Auto. Ins. Co.*, 58 Misc 3d 140[A], 2017 NY Slip Op 51857[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017])."

In the instant case, Respondent only submitted verification requests dated April 16, 2024, April 24, 2024, and May 28, 2024 to Applicant requesting the MRI film of the right shoulder. However, Respondent did not submit any proof of mailing or an affidavit by someone with personal knowledge that the verification remains outstanding. While Applicant acknowledged receipt Respondent's letters, Applicant responded to the requests by letters dated May 10, 2024 and June 17, 2024 noting that it was not in possession or control of the MRI film and providing a copy of the MRI report. Applicant also submitted proof of faxing of its responses.

Respondent did not submit any evidence that it responded to Applicant's June 17, 2024 response. Hence, since Respondent failed to respond to or acknowledge Applicant's response within 30 days, I find that it failed to properly toll it's time to pay or deny the claim. *See All Health Medical Care, P.C. v. Government Employees Insurance Co.*, 2 Misc.3d 907 (Civ. Ct. Queens Co. 2004).

Furthermore, while Respondent's verification requests noted that they were copied to the MRI facility Borukhov Radiology, Respondent failed to submit proof of mailing of the requests to that facility. Moreover, Respondent failed to submit an affidavit or any

evidence to establish that the verification remains outstanding. Therefore, I find that Applicant's claim is ripe for arbitration and that Applicant is entitled to reimbursement for the services provided.

Accordingly, Applicant's claim is awarded in its entirety.

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
	Uptown Healthcare Management Inc d/b/a East Tremont Medical Center	03/23/24 - 03/23/24	\$698.20	Awarded: \$698.20
Total			\$698.20	Awarded: \$698.20

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/17/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from July 17, 2024, thirty days from Applicant's response to verification, for the Claim awarded above at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

The insurer shall pay an attorney's fee in accordance with 11 NYCRR 65-4.6.

- 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 NY

SS :

County of Westchester

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

03/22/2025

(Dated)

Robyn McAllister

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:
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Electronically Signed

Your name: Robyn McAllister
Signed on: 03/22/2025