

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sudha Patel MD
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1357-6274

Applicant's File No. AR24-23216

Insurer's Claim File No. 3248D667V

NAIC No. 25178

ARBITRATION AWARD

I, Gregory Watford, 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 (VR)

1. Hearing(s) held on 02/25/2025
Declared closed by the arbitrator on 02/25/2025

Alek Beynenson from The Beynenson Law Firm, PC participated virtually for the Applicant

Shelly Heffez from Abrams, Cohen & Associates, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$443.69**, 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 dispute arises from the underlying automobile accident of March 15, 2023, in which Assignor, then a 24-year-old male was a passenger on an E-bike. Thereafter, he sought private medical attention where he was recommended to begin receiving conservative care treatments.

On April 10, 2023, Assignor underwent an initial evaluation (99205) at Applicant's facility. On July 31, 2023, Assignor underwent a follow-up evaluation (99215) at

Applicant's facility. In dispute in the case are the fees for the aforementioned evaluation services and related COVID PPE supplies. Applicant timely submitted the bills to Respondent for payment in an amount totaling \$443.69.

Respondent timely denied payment for the bill for DOS 4/10/23 on the grounds that Assignor was injured while riding on a Class B motorcycle/E-Bike and therefore excluded from coverage under the PIP policy of the insured vehicle that struck him.

For DOS 7/31/23, Respondent did not pay or deny the bill on the grounds that it did not receive the bill until it was listed on the AR-1 and included in Applicant's submission. Respondent further asserted that the bill was not ripe for arbitration and should be dismissed without prejudice as premature.

When asked at the hearing. Respondent did not raise any fee schedule objections to the amounts billed by Applicant.

The issues to be decided in this case are:

Whether Applicant established entitlement to No-Fault compensation for office evaluation and PPE services provided to Assignor.

Whether the E-bike that Assignor was riding at the time of the accident was a Class C limited use motorcycle and not subject to the motor vehicle liability insurance requirement and resulting in No-Fault coverage or a Class A or Class B limited use motorcycle which would then trigger motor vehicle liability insurance requirements and there being no No-Fault coverage.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions and documents contained in the American Arbitration Association's ADR Center Electronic Case File (ECF). This matter was decided based upon the submissions of the parties as contained in the ECF, as well as upon the oral arguments of the parties at the time of the hearing. All documents contained in the ADR folder that were submitted at least 30 days prior to the hearing date are hereby incorporated into this hearing and were considered in reaching my findings. These submissions constitute the record in this case. Evidence relating to the issues of fraud, staged accidents, jurisdiction, fee disputes, proof of paid claims, and policy exhaustion need not be submitted at least 30 days prior to the hearing date. There were no witnesses.

Pursuant to Insurance Law § 5106(a) and the Insurance regulations, an insurer must either pay or deny a claim for motor vehicle no-fault benefits, in whole or in part, within 30 days after an applicant's proof of claim is received (*see* Insurance Law § 5106[a]; 11 NYCRR 65-3.8[c]; *see also* 11 NYCRR 65-3.5). Infinity Health Products, Ltd. v. Eveready Ins. Co., 67 A.D.3d 862, 864, 890 N.Y.S.2d 545, 547 (2d Dept. 2009). A

claimant's prima facie proof of claim for no-fault benefits must demonstrate that the prescribed claim forms were mailed to and received by the insurer and are overdue. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 506, 14 N.Y.S.3d 283, 290 (2015). Applicant's proof is also in Respondent's denials, which acknowledged receipt of the bills.

Bill Not received - Prima Facie Case

DOS 7/31/23 (\$158.69)

For this bill, Respondent asserted that it did not receive the bill until it was listed on the AR-1 and included in Applicant's submission. In support of its argument, Respondent uploaded an affirmation of Non-Receipt from Jeremiah Easterly, Claims Specialist of Respondent's company.

Mr. Easterly discussed Respondent's claims processing procedures related to incoming mail for No-fault forms NF-2s and NF-3s which are received at designated post office boxes in Atlanta Georgia. He affirmed that he reviewed the Respondent's claims office electronic filing system where documents associated with No-fault claims are logged into the system. When he reviewed the claim file for this specific case, the computer records revealed that no bill was received for the date, amount, service and claimant in dispute. He further asserted that Applicant failed to provide sufficient proof of mailing for the bill in dispute.

Generally, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee. New York and Presbyterian Hospital v. Allstate Insurance Company, 29 A.D. 3d 547 (N.Y. App. Div. 2nd Dept. 2006) *quoting*, Matter of Rodriguez v Wing, 251 A.D.2d 335 (App. Div. 2nd Dept. 1998). "The presumption may be created by either proof of actual mailing or proof of the standard office practice or procedure designed to ensure that items are properly addressed and mailed." New York and Presbyterian Hospital v. Allstate Insurance Company, 29 AD 3d 547 *quoting* Residential Holding Corp. Scottsdale Insurance Company, 286 A.D. 2d 679 (App. Div. 2nd Dept. 2001). Such "office practice must be geared so as to ensure the likelihood that the [the correspondence] is always properly addressed and mailed." Nassau Insurance Company v. Murray, 46 N.Y. 2d 828 (1978).

In support of its prima facie case, Applicant uploaded proof of actual mailing in the form of a post marked certificate of mailing. A review of the documents revealed that Applicant mailed the bill on 8/9/23 to MVAIC at 100 William Street, New York. Applicant also uploaded proof of mailing for the linked bill for DOS 4/10/23. A review of Applicant's proof for the linked bill revealed that the bill was properly addressed to Respondent's P.O. Box 106170 in Atlanta. It should be noted that this P.O. Box is the same P.O. Box referenced in the affirmation of Mr. Easterly.

Comparing the relevant evidence and arguments presented by both parties against each other, I am persuaded by the Respondent's arguments and evidence regarding the sufficiency of Applicant's proof of mailing. I find that Applicant mailed the bill in dispute to the wrong carrier, MVAIC, and not Respondent. Consequently, I also find

that Applicant has not presented sufficient evidence that the bill was mailed to the proper address.

Accordingly, I find that this bill was never received by Respondent and therefore not overdue. Therefore, I dismiss this bill without prejudice as premature and not ripe for arbitration.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its remaining claim. Viviane Etienne Med Care, PC v. Countrywide Ins. Co., Id. Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See Citywide Social Work & Psych. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004, NY Slip Op 24034 (Civ. Ct., Kings County 2004).

I note that an arbitrator need not adhere with strict conformity to the evidentiary rules set forth in CPLR 2016 see Auto One Ins. Co., v Hillside Chiropractic P.C., 126 A.D. 3d. 423 (1st Dept. 2015) citing 11 NYCRR 65-4.5 (o) the arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations. Bd. of Education, et. al. v. Bellmore-Merrick, 39 N.Y. 2d. 167 (1976).

No Coverage Defense

According to the police accident report, Assignor was a passenger on an E-bike which was being operated by MV when it collided with Respondent's insured's vehicle.

Respondent's denial states:

In accordance with this policy, you do not qualify for coverage as you do not meet the definition of an Eligible Injured Person while occupying a motorcycle. Your claim for NY No-Fault benefits is respectfully denied.

A claimant's prima facie showing establishes a presumption of coverage, and the burden of going forward on the issue of coverage falls upon the insurer; once the insurer comes forward with proof for its belief that there is no coverage, the burden shifts to the claimant to prove coverage by a preponderance of the evidence. New York Massage Therapy P.C. v. State Farm Mutual Ins. Co., 14 Misc.3d 1231(A), 836 N.Y.S.2d 494 (Table), 2006 N.Y. Slip Op. 52573(U), 2006 WL 4057169 (Civ. Ct., Kings Co., Sylvia G. Ash, J., Dec. 22, 2006).

Respondent's lack of coverage defense survives preclusion. See the case, Central Gen. Hosp. v. Chubb Group of Ins. Co., 90 N.Y.2d 195 (1997).

The issue in the instant matter is whether Respondent met its burden of proof in establishing that the Assignor was operating a motorcycle as that term is defined under the No-Fault law and NYS Vehicle and Traffic Law, section 121-B and therefore not an eligible injured person to recover no-fault benefits.

I found the arbitration decision, Shahid Mian MD P.C and Geico Insurance Company, AAA Case No. 17-18-1088-6332 by No-Fault Arbitration Nada Saxon, Esq., quite instructive regarding this issue. In determining a similar issue, she opined:

"A motorcycle is defined in NY Ins. Law 5102(m) as "any motorcycle as defined in [Vehicle and Traffic Law §123], and which is required to carry financial security pursuant to article six, eight or forty-eight A of the Vehicle and Traffic Law."

Vehicle and Traffic Law §123 defines "motorcycle" as "(e)very motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor." Article 6 requires financial security if the motor vehicle must be registered. Article 8 applies to vehicles for hire. Article 48-A requires the registration of "limited use vehicles".

Vehicle and Traffic Law §121-b defines a limited use motorcycle as:

A limited use vehicle having only two or three wheels, with a seat or saddle for the operator. A limited use motorcycle having a maximum performance speed of more than thirty miles per hour but not more than forty miles per hour shall be a class A limited use motorcycle. A limited use motorcycle having a maximum performance speed of more than twenty miles per hour but not more than thirty miles per hour, shall be a class B limited use motorcycle. A limited use motorcycle having a maximum performance speed of not more than twenty miles per hour shall be a class C limited use motorcycle.

Class C limited use motorcycles do not need to carry financial security pursuant to VTL§2265.

New York State's Vehicle & Traffic Law Article 48-A indicates that if a limited use motorcycle/scooter has the ability to travel over 20 miles per hour, it is required to carry insurance. Pursuant to the VTL, class C motorcycles, which have a maximum speed of 20 miles per hour, are not required to carry insurance (see, VTL 12-b, 2265[3]).

Construing the provisions together, the operator or a passenger on a class C limited use motorcycle is entitled to no-fault benefits in the absence of any other statutory exclusion of benefits. (See Englington Medical, P.C. v. MVAIC, 81 A.D.3d 223 [2 Dept. 2011]; and see also, New Millennium Medical Imaging, PC v. MVAIC, 46 Misc.3d 1222[A], 13 N.Y.S.3d 851 [Civ. Ct. Kings Co., Katherine A. Levine, J., Jan 28, 2015].) See also Tyler v Traveler's Ins. Co., 110 Misc.2d 471, 473 [1981] ("operators of and passengers on class C mopeds, minibikes and go-carts are entitled to first-party benefits under no-fault")."

I agree with Arbitrator Saxon's analysis which essentially states in summary, if the E-bike cannot travel up to 20 MPH, it would be classified as a "Class C" limited use motorcycle with the DMV. Class C limited use motorcycles do not need to carry financial security/insurance.

However, if the scooter is a Class A (can go over 30 MPH), or Class B (can go over 20 MPH), you may not be considered eligible for no-fault. Class A and Class B limited use motorcycles are required to be insured under the laws of the State of New York, whereas Class C motorcycles are not.

Respondent asserted Assignor was a passenger on a Class B motorcycle.

In support of its defense, Respondent relied on the police accident report which listed the Vehicle Type as an "E-Bike" and the Year and Make as "FLY Wing 7."

Respondent uploaded a copy of a specification sheet for a "Fly-7 (Street Legal) E-Bike." The document indicates that the Fly-7 has a top speed of 30 mph.

<https://www.flyebike.com/product-page/fly-7-street-legal-1>

Based upon these documents, Respondent asserted that Assignor was a passenger on a Class B limited use motorcycle and therefore was required to be registered with NYS DMV and have insurance. "New York State's Vehicle & Traffic Law Article 48-A indicates that if a limited use motorcycle or scooter can travel over 20 miles per hour, it is required to carry insurance."

Applicant's counsel argued that Respondent's evidence is insufficient to satisfy its burden of proof that the E-bike in dispute was not a Class C motorcycle. He argued that as noted on the MV-104, the scooter was a "Fly Wing 7" while Respondent's evidence was for a "Fly-7" which is not the same. Counsel also argued that Respondent did not upload a photograph of the "Fly Wing-7" which was involved in the accident for comparison with the "Fly-7 E-bike." Counsel also noted that Respondent did not upload a copy of an affidavit or affirmation from an individual with personal knowledge about the specifications and maximum speed of the "Fly Wing-7" in dispute. Counsel argued that without this information, Respondent cannot satisfy its burden to demonstrate that the E-bike in question was capable of going more than 20 mph and therefore there is no No-fault coverage available for Assignor.

Having carefully considered the submissions of the parties, the relevant case law and the arguments of respective counsel, I conclude that the preponderance of the credible evidence supports a finding in favor of the Applicant. I find that Respondent has not sufficiently established a prima facie defense that there was no coverage for this loss and that the Assignor is not an "eligible injured person" pursuant to the No-Fault Law.

Based upon the evidence before this arbitrator, I find that Respondent has not sufficiently established that the "Fly Wing -7 E-Bike" in this case is not a Class C Limited Use motorcycle. Moreover, Respondent did not upload any sworn statements or EUO testimony from Assignor or another person with knowledge to support its defense.

Based upon the foregoing, the burden does not shift to Applicant to prove otherwise because Applicant's claim carries a presumption of coverage. Mount Sinai Hosp. v. Triboro Coach, 263 A.D. 2d 11, 19-20 (2nd Dept., 1999).

Since Respondent did not upload any documents or evidence to support of fee schedule defense, Applicant is awarded as billed.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot, without merit, and/or waived insofar as not raised at the time of the hearing.

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
	Sudha Patel MD	04/10/23 - 04/10/23	\$285.00	Awarded: \$285.00
	Sudha Patel MD	07/31/23 - 07/31/23	\$158.69	Dismissed without prejudice
Total			\$443.69	Awarded: \$285.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/23/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant's award shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30-day month from the date payment became overdue to the date of the payment of the award pursuant to 11 NYCRR 65-3.9. The end date for the calculation of the period of interest shall be the date of payment of the claim. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.")

Where a claim is timely denied, interest shall begin to accrue as of the date arbitration is requested by the claimant unless arbitration is commenced within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the 30th day after proof of claim was received by the insurer. 11 NYCRR 65-4.5(s)(3), 65-3.9(c); Canarsie Medical Health, P.C. v. National Grange Mut. Ins. Co., 21 Misc.3d 791, 797 (Sup. Ct. New York Co. 2008) ("The regulation provides that where the insurer timely denies, then the applicant is to seek redress within 30 days, after which interest will accrue.")

C. Attorney's Fees

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

Respondent shall pay Applicant a separate attorney's fee, in accordance with 11 NYCRR 65-4.6(d). Since the arbitration request was filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6(d) subject to a maximum fee of \$1,360.00.

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

03/27/2025
(Dated)

Gregory Watford

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:
e9f3ee64eaa2950582110c0c03511893

Electronically Signed

Your name: Gregory Watford
Signed on: 03/27/2025