

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Viotek Med Supplies Inc
(Applicant)

- and -

Clear Blue Insurance Company
(Respondent)

AAA Case No. 17-24-1365-7154

Applicant's File No. 3247043

Insurer's Claim File No. CBIN000536

NAIC No. Self-Insured

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 04/14/2025
Declared closed by the arbitrator on 04/14/2025

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

John Doerbecker from Network Adjusters, Inc. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$349.41**, 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 20 year old assignor reported involvement in a motor vehicle accident on December 12, 2023; claimed related injury and received a cold compression unit with shoulder wrap provided by the applicant on April 16, 2024.

The applicant submitted a claim for these medical services, payment of which was denied by the respondent on the grounds that there was no coverage for this claim/loss because the assignor's injuries did not arise from the use and operation of the vehicle insured by the respondent and were not causally related to the subject accident.

The issues to be determined at the hearing are:

Whether the assignor's injuries arose out of the use or operation of a motor vehicle.

Whether the respondent established that its denial was proper.

4. Findings, Conclusions, and Basis Therefor

This 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 assignor contends that he was involved in a motor vehicle accident on December 12, 2023. The claim at issue was denied on the grounds that he did not meet the definition of eligible injured person under the policy, because he was not injured as a result of the use or operation of a motor vehicle.

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.)

I find that applicant established its *prima facie* case of entitlement to No-Fault compensation for its claim. The burden then shifts to the respondent to prove that the bill in question was properly denied.

This claim was denied and both the global denial dated April 19, 2024 and the denial dated May 16, 2024 state in pertinent part: "[o]ur completed investigation revealed that the injured party is not an eligible injured party. The injuries did not arise out of the use and operation of the insured's motor vehicle. Therefore, your No-Fault claim is denied effective 12/12/2023."

To support this denial, the respondent relies on the EUO of the assignor and the EMS report at the scene of the subject accident.

I have reviewed the EUO transcript and the summary submitted by the respondent. The testimony of the assignor appears to be the same as reported by the respondent. He testified that at the scene of the subject accident a vehicle made a right turn in front of him and caused him to fall off his electric bicycle and sustain injuries.

According to the assignor there was a witness to the alleged accident who took a photograph of the vehicle allegedly involved in the accident. However, the

assignor did not have any information including the name of the witness or any contact information for him.

The driver of the subject vehicle provided documentation to support the fact that he was in the area where the accident allegedly occurred and photographs of the vehicle which was allegedly involved in the subject accident. These photographs do not show any damage to the vehicle of the insured driver on the date of the subject accident.

The respondent also provided the Prehospital Care Report Summary by FDNY report which is signed by the assignor and contains the following statement taken from the assignor by EMS personnel regarding the happening of the accident:

"Upon arrival on scene 20 year old male was found sitting on the floor of the street. PT got up and walked over to EMS Crew inside of the ambulance. PT states that while riding his motorized bicycle at approx. 10-15mph he hit his brakes hard and flew off his bicycle."

The report also states that the chief complaint (primary) reported by the assignor was "I FELL OFF MY BICYCLE" The respondent did not have possession of this statement at the time the EUO was held.

Based on the foregoing, I find that the statement by the assignor signed at the scene of the alleged accident, his inability to identify the person who he claimed provided him with the photograph of the license plate of the vehicle allegedly involved in the accident, was sufficient to establish the respondent's denial on the grounds that the injured party was not an EIP and the injuries sustained by him were not related to the use and operation of a motor vehicle.

Under these circumstances, the respondent has established its coverage defense.

Accordingly, the claim is denied 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.

04/15/2025
(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:
a8574722a33e063063d3f43d7ee2181a

Electronically Signed

Your name: Anne Malone
Signed on: 04/15/2025