

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

eMed Pharmacy Corp.
(Applicant)

- and -

Allstate Property and Casualty Insurance
Company
(Respondent)

AAA Case No. 17-23-1329-9635

Applicant's File No. RB-124-405808

Insurer's Claim File No. 0723164034

NAIC No. 17230

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 04/25/2025
Declared closed by the arbitrator on 04/25/2025

Elyse Ulino, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

Peggy Gizzarelli, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$173.32**, 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 53 year old EIP, reported involvement in a motor vehicle accident on July 27, 2023; claimed related injury and received Diclofenac gel topical medication provided by the applicant on December 2, 2023.

The applicant submitted a claim for this topical prescription medication, payment of which was denied by the respondent based on a material misrepresentation when the policy was issued.

The issue to be determined at the hearing is whether the respondent established that the denial is proper based on a material misrepresentation at the time that the policy was issued.

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.

This claim involves a New York accident involving a policy issued in for a person who claimed to be a resident of Georgia at the time the policy was issued. The respondent contends that the EIP actually resided in New York and the subject vehicle was garaged in New York.

The NF 10 states in pertinent part:

Please be advised that your claim for no-fault benefits is denied based on fraud and material misrepresentations made in the procurement and/or renewal of the subject insurance policy. Allstate would not have issued and/or renewed the policy under the same terms and conditions but for this fraud and material misrepresentations made in relation to the procurement and/or renewal of this policy of insurance. This position is taken as the result of Allstate's investigation into the claim surrounding the accident of July 27, 2023 and the Examination under Oath testimony of [the assignor.]

In response, the applicant argued that there was no SIU affidavit submitted and that the EUO testimony did not establish that the EIP did not reside in Georgia on the date of the subject accident.

The EIP testified at an EUO on November 2, 2023. The transcript includes the following testimony:

Pg. 3 ll. 12-14

Q. Where do you reside?

A. 1187 East 214th Street, Apartment 2B, Bronx, New York 10469

Pg.7 ll.23-25p

Q. And do you reside in Georgia?

A. Yes, I have a location in Georgia as well, yes.

Pg. 8-ll. 2-6

Q. Okay. What is that address?

A. 168 Madison Avenue, Jackson, Georgia, 20233.

The EIP testified that he travels a lot for business and that at the Bronx address he gets mail for his business and that he receives a light bill, cable bill. He has resided in the Bronx since 2017 or 2018 and in Georgia since 2020.

The EIP further testified that he spends about a week or two, but at the time of the EUO probably maybe a couple of days. He stated that he was mostly doing work in New York and that he visits Georgia overnight, maybe two or three days.

He also testified that he owns three motor vehicles and that all of them are garaged in New York now and were at the time of the subject accident.

Finally, he testified that he didn't see any necessity to change his insurance address to his New York address because his insurance was obtained in Georgia where he still goes.

He stated that he is a New York City union carpenter but has not worked since the date of the subject accident.

Based on the EUO testimony, I find that the respondent has established its coverage defense.

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.

05/08/2025
(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:
fa831bb39f62466224f54f7c6c36d8ca

Electronically Signed

Your name: Anne Malone
Signed on: 05/08/2025