

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Complete Medical Care PC
(Applicant)

- and -

Affirmative Direct Insurance Company
(Respondent)

AAA Case No. 17-24-1363-4788

Applicant's File No. RFA24-330984

Insurer's Claim File No. AD23032905

NAIC No. 10413

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 03/21/2025, 05/15/2025
Declared closed by the arbitrator on 05/15/2025

Philip Kim, Esq. from Horn Wright, LLP participated virtually for the Applicant

Rawshan Mobin, Esq. from *Abrams Fensterman, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,882.69**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$4,151.55 to conform to the appropriate fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 39 year old EIP reported involvement in a motor vehicle accident on February 23, 2023; claimed related injury and underwent MRI studies of the bilateral feet and left elbow on April 6, 2023 and right shoulder and elbow provided by the applicant on May 3, 2023.

This claim involves 5 bills - three for date of service April 6, 2023 and two for services rendered on May 3, 2023. The applicant submitted claim for these medical services. The Payment of the bills for date of service April 6, 2023 were denied were denied by the respondent because it did not receive notice of this claim within 30 days of the date of the subject accident.

The applicant contends that the denials of these bills are late on their face.

The respondent contends that it did not receive the bills for date of service May 3, 2023.

The issues to be determined at the hearing are:

Whether the respondent established its defense of late notice of the claim at issue.

Whether the applicant established its *prima facie* entitlement to no fault benefits for services rendered on May 3, 2023.

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.

Date of service April 6, 2023

The applicant submitted proof of mailing of all the bills at issue, which were mailed to 4450 Sojuourn Drive, Suite 500, Addison Texas ,75001. Apparently, this is the address of Affirmative Insurance Holdings, a Texas Company, which is not affiliated in any way with the respondent.

The respondent denied the three bills for these dates of service because it did not receive notice of this claim within 30 days of the date of the subject accident.

The applicant provided proof of mailing of the bills for date of service May 23, 2023 to 4450 Sojuourn Drive, Suite 500, Addison Texas ,75001. Although they were sent to an incorrect address, the respondent has acknowledged receipt of these bills.

The respondent denied this claim for late notice. However, the denial of these bills was late on its face.

Therefore, the applicant is awarded \$2,460.13 for services rendered on April 6, 2023.

Services provided on May 3, 2023

The applicant submitted two bills in the total amount of \$1,691.43 for services rendered on May 3, 2023. The applicant submitted proof of mailing of these bills to 4450 Sojuourn Drive, Suite 500, Addison Texas , 75001.

It is well settled that an applicant establishes its *prima facie* 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.)

To support its contention that the bills for services rendered on May 3, 2023 were not timely received, the respondent submitted affidavits from persons with knowledge of its business practices who attested to its non-receipt.

To support its contention that the bills for date of service May 3, 2023 were not received, the respondent relied upon the affidavits of Sharzil Rahman, employed by the respondent as a No Fault Claims Assistant and Andrew Don, Program Manager of Affirmant Direct Insurance Company and the arguments made by the respondent's attorney at the hearing.

The affidavit of Ms. Rahman attests to the fact that the bills for services rendered on May 3, 2023 were not received by the respondent. The affidavit of Mr. Don, attested to the fact that the respondent has been located at One Metrotech Center, Suite 1803, Brooklyn, New York 11201 for many years and that it has never had offices at 4450 Sojourn Drive, Suite 500, Addison, TX 75001 or anywhere else in Texas and that "Affirmative Direct Insurance Company is not a subsidiary of Affirmative Insurance Holdings, Inc. and has no connection to them, or any other Texas entity, whatsoever."

At the hearing, the attorney for the respondent explained that the issue of mailing bills for Affirmative Direct Ins. Company to an incorrect address has continued for many years. Further, he stated that since this is a constant issue, sometimes the bills, which were incorrectly sent to Affirmative Insurance Holdings, are sent by them to this respondent.

The applicant did not provide any proof of mailing of these bills to the respondent at One Metrotech Center, Suite 1803, Brooklyn, New York 11201.

I have reviewed the submissions, including the proof of mailing of the bills for date of service May 3, 2023 to 4450 Sojuourn Drive, Suite 500, Addison Texas , 75001 and have taken into consideration the arguments made at the hearing and the proofs presented and have determined that the respondent has established its defense of non-receipt of the bills for this date of service.

Based on the foregoing, the applicant has not established its *prima facie* entitlement to no fault benefits for services rendered on May 3, 2023.

Therefore, the claim for date of service May 3, 2023 is dismissed with prejudice.

Accordingly, the applicant is awarded \$2,460.13 and the remainder of the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator at this 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 | Amount Amended | Status |
|--------------|----------------------------------|---------------------|-------------------|----------------|----------------------------|
| | CitiMed Complete Medical Care PC | 04/06/23 - 04/06/23 | \$966.53 | \$996.53 | Awarded: \$991.56 |
| | CitiMed Complete Medical Care PC | 04/06/23 - 04/06/23 | \$1,983.10 | \$1,468.57 | Awarded: \$1,468.57 |
| | CitiMed Complete Medical Care PC | 05/03/23 - 05/03/23 | \$966.53 | | Denied |
| | CitiMed Complete Medical Care PC | 05/03/23 - 05/03/23 | \$966.53 | | Denied |
| Total | | | \$4,882.69 | | Awarded: \$2,460.13 |

B. The insurer shall also compute and pay the applicant interest set forth below. 09/03/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the

particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 11 NYCRR §65-4.6(d.)

- 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 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.

06/10/2025

(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:
660e64af71b0966a131f10c80169f205

Electronically Signed

Your name: Anne Malone
Signed on: 06/10/2025