

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lense Supply Inc.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1367-4355
Applicant's File No.	190287
Insurer's Claim File No.	8712629610000002
NAIC No.	22055

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 06/09/2025
Declared closed by the arbitrator on 06/09/2025

John Gallagher, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Joseph Costa-Cappucci from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,347.58**, 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 39 year old EIP reported involvement in a motor vehicle accident on June 17, 2024; claimed related injury and received numerous items of durable medical equipment provided by the applicant on July 15, 2024.

The applicant submitted a claim for this durable medical equipment (DME) payment of which was delayed pending the EUO of the applicant and requests for various documents/information related to the business practices of the applicant.

The respondent also asserted a fee schedule defense.

The issues to be determined at the hearing are:

Whether the respondent established that the claim is premature.

Whether the respondent established its fee schedule defense.

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.

No show EUO/Outstanding verification requests

It is the respondent's burden to prove that the bills in question were properly denied. Under 11 NYCRR 65-1.1, which prescribes the No-Fault Mandatory Personal Injury Protection Endorsement which must be included in all owners policies of motor vehicle liability insurance issued in New York, the "Conditions" section of the endorsement contains a "Proof of Claim" provision which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same..."

If the respondent requires an EUO of the applicant it has 15 business days after receipt of proof of claim in which to send correspondence requesting the examination under oath. If the party fails to attend, within 10 calendar days of the no-show the insurer must contact the party from whom the EUO is requested to give the party a second opportunity to attend.

If the party fails to appear at the rescheduled EUO, an insurer may issue a denial of pending claims based upon the failure to meet the condition for coverage in not submitting to the requested EUO, as required under the prescribed endorsement. There is no requirement in the regulation that the denial must state the specific reason(s) why the insurer required the EUO.

The respondent alleges to have attempted to schedule the EUO of the applicant, who failed to appear.

The NF3 is dated July 28, 2024. The first letter requesting an EUO and documents and information regarding the applicant's business practices is dated August 29, 2024 and the second letter is dated October 2, 2024.

The applicant provided proof of mailing of the NF-3 on July 30, 2024, allowing 5 days for mailing, the EUO letters should have been mailed by August 20, 2024.

In Island Life Chiropractic, PC v Travelers Ins.Co., 64 Misc. 3d 143(A), 117 N.Y.S.3d 428 (App Term 2d Dept. 2019) the court held that "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 that the defendant did not receive the requested verification. (See 11 NYCRR 65-3.8[a]; Right Aid Medical Supply Corp. v State Farm Mut. Auto Ins. Co., 58 Misc 3d 140(A), 94 N.Y.S.3d 540 NY Slip OP 51875[U] (App Term 2d Dept, 2d, 11th & 13th Jud Dists (2017.)

In the instant matter, the respondent did not submit proof of mailing of the EUO/verification requests. In addition, the respondent did not submit evidence from someone with personal knowledge that a response was not received from the applicant.

Under these circumstances, the respondent failed to establish that the claim is premature and therefore, the time to pay or deny this bill at issue is not tolled.

Therefore, an award will be issued in favor of the applicant pursuant to the appropriate fee schedule.

Fee schedule

The applicant billed a total of \$4,347.58 for the DME at issue. The respondent delayed payment of this claim based on its demand for an EUO and documents/information from the applicant. I have already determined that the respondent did not establish this defense.

To prevail in a fee schedule defense, the respondent must demonstrate by competent evidentiary proof that applicant's claims were in excess of the appropriate fee schedules, or otherwise respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Co., 11 Misc.3d 145(A) (App. Term 1st Dept. 2006.)

An insurer fails to raise a triable issue of fact with respect to a defense that the fees charged were not in conformity with the Workers' Compensation fee schedule when it does not specify the actual reimbursement rates which formed the basis for its determination that the claimant billed in excess of the maximum amount permitted. See St. Vincent Medical Services, P.C. v. GEICO Ins. Co., 29 Misc.3d 141(A), 907 N.Y.S.2d 441 (App. Term 2d, Dec. 8, 2010.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and

often requires testimony and evidence beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the former scenario and does not require an expert opinion.

After a review of the charges and an application of the amounts listed in the applicable DME fee schedule, I have determined that the applicant billed only charges for four items of DME correctly.

The items which were billed correctly are:

EO190 - positioning cushion \$ 22.04

EO215 - thermophore 20.93

EO855 - cervical traction 502.63

EO3961 - shoulder orthosis 1,286.96

Total \$1,832.56

The remainder of the DME items were not billed according to the DME fee schedule. The correct billing is as follows:

EO217 - water circulating pad \$ 412.13

E2612 - lumbar cushion 322.33

EO184- mattress 153.13

LO200 - cervical collar 322.50

LO648 - LSO 708.65

Total \$1,918.74

The charge for EO274 is for an over bed table billed at for \$101.55

A back board was listed under EO273 for which there was no fee schedule listed.

The ortho car seat was billed at \$198.50 under E1399 and there is no indication of how that amount was determined.

Since most of the items of DME were not billed properly pursuant to the correct fee schedule I determined that the applicant would have to provide some support for its billing \$198.50 for the ortho car seat in order for it to be reimbursed.

Based on the submission, I have calculated that the total amount due to the applicant is \$3,751.30.

Accordingly, the applicant is awarded \$3,751.30 in disposition of this claim.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Lense Supply Inc.	07/15/24 - 07/15/24	\$502.63	Awarded: \$502.63
	Lense Supply Inc.	07/15/24 - 07/15/24	\$2,557.99	Awarded: \$1,961.71
	Lense Supply Inc.	07/15/24 - 07/15/24	\$1,286.96	Awarded: \$1,286.96
Total			\$4,347.58	Awarded: \$3,751.30

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/30/2024 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.

07/01/2025
(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:
8c3647fc9a78bf2e4f927efb8cc4e580

Electronically Signed

Your name: Anne Malone
Signed on: 07/01/2025