

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Care Physical Therapy PC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1342-6395

Applicant's File No. OS-72923

Insurer's Claim File No. 0713237204

NAIC No. 29688

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 Faris, Esq. from Law Office of Olga Sklyut P.C. participated virtually for the Applicant

Meghan McDonough, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,834.04**, 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 60 year old EIP reported involvement in a motor vehicle accident on May 9, 2023; claimed related injury and underwent physical therapy treatment and office visits provided by the applicant from May 16, 2023 to January 3, 2023.

The applicant submitted claim for these medical services, payment of which was denied by the respondent because it did not receive notice of this claim within 30 days of the date of the subject accident.

The issue to be determined at the hearing is whether the respondent established its defense of late notice of the claim at issue.

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.

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. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense on the ground that plaintiff untimely notified the respondent of the claim at issue if such defense is not raised in a timely denial. New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001); St. Clare's Hospital v. Allcity Ins. Co., 201 A.D.2d 718 (2d Dept. 1994.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that "late notice will be excused where the applicant can provide a reasonable justification of the failure to give timely notice." 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007); SZ Medical P.C. v. Country-Wide Insurance Co., 12 Misc.3d 52, 817 N.Y.S.2d 851 (App. Term 2nd and 11th Jud. Dists. 2006.)

The submissions include bills for dates of service May 16, 2023 to June 3, 2024 which were initially submitted to Esurance and were subsequently sent to Allstate when the applicant became aware that Allstate was the correct carrier for this claim.

The respondent submitted copies of NF-10s for each of the bills which stated in pertinent part:

Claim denied for failure to comply with written notice requirement.

Notice must be given as soon as reasonably practicable, but in no event more than 30 days after the accident date, unless the eligible injured person submits written proof providing clear and reasonable

justification for failure to comply with such time limitation.

The issue in this matter is not late submission of the bills at issue. The issue is late notice of claim.

In a prior hearing (AAA case no. 17-24-1340-8145) the respondent submitted a copy of the NF2 for this claim which is dated May 30, 2023. The date of accident is May 9, 2023. However, the NF2 was stamped received by the respondent on October 13, 2023.

There is no proof of mailing of the NF 2 submitted in this or any of the other related cases.

Res judicata and collateral estoppel are applicable to no-fault arbitration awards and bar relitigation of the same claim or issue. A.B. Medical Services PLLC v New York Central Mutual Fire Ins. Co., 12 Misc.3d 500, 820 N.Y.S.2d 422 (Civ. Ct. Kings Co. 2006), citing Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982.)

A determination of the *res judicata* effect of a prior arbitration proceeding is for the arbitrator in a subsequent arbitration proceeding. City School Dist. Of City of Tonawanda v. Tonawanda Educ. Ass'n., 63 N.Y.S.2d 846, 482 N.Y.S.2d 258 (1984.)

It is well settled that any judgment, even judgments entered on default have *res judicata* or collateral estoppel effect. See Eagle Surgical Supply, Inc. v. AIG Indem. Ins. Co., 40 Misc. 3d 139(A) (App. Term 2013) Further, the Appellate Term has held that "[t]he declaratory judgment is a conclusive final determination, notwithstanding that it was entered on default...." Ava Acupuncture, P.C. v NY Central Mut. Fire Ins. Co., 34 Misc. 3d 149(A) (App. Term 2012.)

Although the decision in the prior hearing is not collateral estoppel regarding this claim since the applicant is different, there is no new or different evidence in the record in the case at issue which would lead to a contrary finding and conclusion.

Under these circumstances, the respondent has established that the applicant is not entitled to reimbursement for the claim at issue.

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.

07/04/2025

(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:
0287f8267fab3fcdcaf0f21042ceff

Electronically Signed

Your name: Anne Malone
Signed on: 07/04/2025