

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Justin Mirza DO  
(Applicant)

- and -

Enterprise Rent A Car  
(Respondent)

AAA Case No. 17-24-1344-2648

Applicant's File No. M23-739848

Insurer's Claim File No. 20263834

NAIC No.

### ARBITRATION AWARD

I, Heidi Obiajulu, 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: Injured Party

1. Hearing(s) held on 08/29/2025  
Declared closed by the arbitrator on 08/29/2025

John Faris, Esq. from The Law Office of Thomas Tona, PC participated virtually for the Applicant

non appearance from Rental Claims Services f/k/a Elco Claims Services failed to appear for the Respondent

2. The amount claimed in the Arbitration Request, **\$9,938.69**, 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 applicant seeks reimbursement of charges for an evaluation and management service (CPT code 99203) performed on 11/15/23, a follow-up evaluation and management service (CPT code 99214) on 02/07/24, and left knee surgical procedures (CPT codes 29882 LT, 29876 59 LT, 20610 LT, 29880 AS LT, 29876 AS LT, 29876 AS 59 LT, and 20610 AS LT) performed by Dr. Justin Mirza, DO and the physician assistant on 03/08/24, following a motor vehicle accident on 10/13/23. The respondent did not submit a denial, verification requests, or proof of payment. The issues are whether the respondent received notice of the hearing and whether the applicant established its prima facie case.

#### 4. Findings, Conclusions, and Basis Therefor

The decision is based on the documents in the Modria ADR Electronic Case folder maintained by the American Arbitration Association (hereafter referred to as AAA) as of the hearing. **Although the respondent did not appear for the hearing, a review of the hearing notice sent to the respondent's TPA at the address listed on the applicant's claim form, AR-1, and AAA's initiation letter shows that the hearing notice went to the respondent's TPA. Also, AAA's arbitration support confirmed that notice of the hearing was sent to the respondent's TPA. Further, in the arbitration decision, Fat Rabbit Orthopedics PLLC and [Respondent], NYS No-fault Arbitrator Nancy Kramer Avalone, Esq., referenced a Mr. Figurski, FCLS (Employed by Rental Claims Services), who indicated, "Prior to August 1, 2021, RCS Administrative Services Company was doing business as ELCO Claims Services. Prior to May 9th, 2019, our mailing address was P.O. Box 541487, Flushing, NY 11354. From May 10 until July 1<sup>st</sup>, 2021, our mailing address was P.O. Box 5000, Manhasset, NY 11030. Our current address is 201 Dolson Avenue, Suite A, Middletown, NY 10940. That is the address appearing on the hearing notices. Finally, the respondent appeared for the arbitration where the associated ambulatory surgical services were litigated involving the identical peer review and left knee surgery on 03/08/24.**

**There is no evidence to show that the respondent requested an adjournment.**

For the above reasons, I find that the respondent's TPA received notice of the hearing and chose not to appear. On that basis, the arbitration went forward.

The applicant, as assignee of the Injured Party, seeks reimbursement, with interest and counsel fees, under the No-Fault Regulations, for an evaluation and management service (CPT code 99203) performed on 11/15/23, a follow-up evaluation and management service (CPT code 99214) on 02/07/24, and left knee surgical procedures (CPT codes 29882 LT, 29876 59 LT, 20610 LT, 29880 AS LT, 29876 AS LT, 29876 AS 59 LT, and 20610 AS LT) performed by Dr. Justin Mirza, DO and the physician assistant on 03/08/24, for \$9938.69.

The respondent insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., the respondent was obligated to reimburse the Injured Party (or assignee) for all reasonable and necessary medical expenses arising from the use and operation of the insured vehicle.

This case arose from a motor vehicle accident on October 13, 2023, in which the Injured Party (TR), a 42-year-old female, sustained multiple injuries, including to the left knee, while driving the insured vehicle when rear-ended by the adverse vehicle. After the accident, the Injured Party was taken via ambulance to the emergency room of Community Hospital, where she was evaluated, treated, and released.

Subsequently, the Injured Party commenced conservative care.

On 11/15/23, Dr. Mirza, DO, initially evaluated the Injured Party.

On 02/07/24, Dr. Mirza, DO, re-evaluated the Injured Party.

On 03/08/24, Dr. Mirza, DO, assisted by his Physician Assistant, performed left knee surgical procedures, namely an arthroscopy with meniscectomy (CPT code 29880 LT), synovectomy, major in two or more compartments (CPT code 29876-59 LT), and arthrocentesis, aspiration and/or injection in a major joint or bursa (CPT code 20610 LT).

After that, the applicant contends that it submitted its claim forms to the respondent, seeking reimbursement of its claim.

**The respondent did not submit a denial, verification requests, or an arbitration submission packet.**

However, the applicant submitted a peer review by Dr. Julio V. Westerband, M.D., FAAOS, listing the disputed amount for the surgical procedures on 03/08/24 **and indicating that the peer reviewer reviewed Dr. Mirza's bill.**

At the outset, I find that the applicant established its **prima facie case of entitlement to reimbursement of the left knee surgical services performed on 03/08/24** with the submission of its claim form for that procedure setting forth the fact and amount of the loss sustained and the copy of the respondent's peer review by Dr. Julio Westerband, MD, which demonstrates that the respondent received the applicant's claim form, that more than 30-days elapsed since its receipt of same, and that the applicant's claim was overdue. See Insurance Law section 5106 [a]; Viviane Etienne Medical Care, PC v. County-Wide Ins. Co 25 N.Y.3d. 498, (NY, June 10, 2015), Westchester Medical Center v. Nationwide Mut. Ins. Co., 78 A.D.3d. 1168, (N.Y.A.D. 2<sup>nd</sup> Dept., November 30, 2010).

**I find that the applicant's claim for the evaluation and management services is dismissed without prejudice because the applicant failed to submit proof of mailing to create a presumption of mailing to and receipt by the respondent or its TPA.**

Once an applicant establishes a prima facie case, the burden shifts to the insurer to prove its defense.

Although the applicant submitted a copy of the peer review report by Dr. Julio v. Westerband, MD, **the record does not contain a copy of the denial, if any. So, I find the respondent's lack of medical necessity defense is preserved, as well as any defense subject to the preclusion rule.**

Since the applicant established its prima facie case, I find in its favor because the respondent's defense is precluded.

It is also noted that in the linked case involving the associated facility services for the left knee surgery on 03/08/24, the respondent litigated the defense of a lack of medical necessity based on Dr. Westerband's peer review dated 03/20/24 [the peer review in this case is 03/29/24. [There may be a typo.] NYS No-fault Arbitrator Natia Pavel, Esq., found in favor of the applicant based on the rebuttal by the applicant. The arbitrator found the peer review was legally sufficient to meet its initial burden of proof to establish the respondent's prima facie case, but found that the applicant refuted Dr. Westerband's arguments. She reasoned: "*After a review of the medical evidence submitted, I find in the Applicant's favor. I find the rebuttal was cogent and meaningfully addressed essentially all of the arguments raised by Dr. Westerband. There was conservative care for over three months which is sufficient. Moreover, even the IME referenced by the Respondent noted positive findings in the left knee. Therefore, I find the Respondent's denial is not sustained and the Applicant's claim is granted.*"

Finally, there is a fee schedule defense, based on the plain reading of the NYS Workers' Compensation Medical fee schedule. I find that Surgery Ground Rules#5 and 12 apply. Therefore, the applicant is entitled to be reimbursed \$2718.43 for Dr. Mirza's services for CPT code 29880, \$1032.96 for CPT code 29876 59, \$50 for CPT code 20610, \$290.87 for the PA's services for CPT code 29880, \$110.53 for the PA's services for CPT code 29876 50, and \$5.35 for the PA's services for CPT code 20610. Summing up those amounts, I find the applicant is entitled to be reimbursed \$4208.14, as reimbursement for its surgical services performed on 03/08/24.

**Accordingly, for the above reasons, I find in favor of the applicant in the amount of \$4208.14. The remainder of the applicant's claim for the E/M services on 11/15/23 and 02/07/24 is dismissed without prejudice.**

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.

<b>Medical</b>		<b>From/To</b>	<b>Claim Amount</b>	<b>Status</b>
	<b>Justin Mirza DO</b>	<b>11/15/23 - 03/08/24</b>	<b>\$9,938.69</b>	<b>Awarded: \$4,208.14</b>
<b>Total</b>			<b>\$9,938.69</b>	<b>Awarded: \$4,208.14</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 04/16/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The applicant's award of \$4208.14 shall bear interest at a rate of two percent per month, calculated on a pro-rata basis using a 30-day month from 04/16/24, the date the applicant initiated arbitration, to the date of the payment of the award, under 11 NYCRR 65-3.9 (a).

C. Attorney's Fees

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

As this matter was filed **after** February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with 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 NJ  
SS :  
County of Union

I, Heidi Obiajulu, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/01/2025  
(Dated)

Heidi Obiajulu

**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:**  
1767f0c822b66bd80b63c875320d9c67

**Electronically Signed**

Your name: Heidi Obiajulu  
Signed on: 09/01/2025