

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sharsham Corp DBA Willis Pharmacy
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-24-1339-6930

Applicant's File No. DK24-434027

Insurer's Claim File No. 1137809

NAIC No. 16616

ARBITRATION AWARD

I, Tasha Dandridge-Richburg, 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 09/02/2025
Declared closed by the arbitrator on 09/02/2025

Evan Polansky, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Joanne Vu, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,679.60**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount at issue was reduced from **\$2679.60** to **\$2149.59** to reflect the proper amount for the prescription medication billed pursuant to the Workers' Compensation Fee Schedule.

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

3. Summary of Issues in Dispute

The 28 year-old female EIP was a passenger in a motor vehicle that was involved in an accident on October 23, 2023. At issue in this case is \$2149.59 for the prescription

medication Naproxen/Esomeprazole dispensed on date of service November 2, 2023. Respondent argues that the bill was never received.

4. Findings, Conclusions, and Basis Therefor

to 11 NYCRR §65-4.5(o)(1), the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments by or on behalf of the parties and any testimony given during the hearing.

45 DAY RULE

Respondent contends that it did not receive Applicant's bill for date of service November 2, 2023 until the instant arbitration was commenced. Therefore, the bill was not mailed within 45 days as is required by Regulation. In support of its argument Respondent submitted an affidavit by Tamim Ali, a No-Fault examiner for Respondent. Her affidavit explains the standard business practices and procedures with respect to the receipt of and mailing of documents. Her affidavit further explains that based upon her review of the file the bill was not received until the Arbitration was commenced.

In response, Applicant argues that it timely mailed the bill. In support of its argument, Applicant submitted a post office date stamped mailing log. According to the log a bill in the amount, "\$2679.60" regarding the EIP for date of service, "11/2/2023" was mailed to Respondent at the address, "5 Broadway, Freeport, NY 11520." The log has an official post office stamp dated December 11, 2023. The log is signed by a postmaster or employee from the post office.

Analysis

An applicant establishes a *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms setting forth proof of the fact and amount of loss sustained were mailed and received by the insurer and that No-Fault benefits are overdue. *Viviane Etienne Medical Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015). *See also, Sunshine Imaging Assn./WNY MRI v. Government Empls. Ins. Co.*, 66 A.D.3d 1419 (App. Div., 4th Dept., 2009).

Generally, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee. *Residential Holding Corp. v. Scottsdale Ins. Co.*, 286 A.D.2d 679 (App. Div., 2nd Dept., 2001); *New York and Presbyterian Hospital v. Allstate Ins. Co.*, 29 A.D.3d 547 (App. Div., 2nd Dept., 2006); *Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co.*, 114 A.D.3d 33 (App. Div., 2nd Dept., 2013). The

presumption of receipt by the addressee may be created by: proof of actual mailing, proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed, or a party's acknowledgment of receipt of the document(s). See, *Residential Holding Corp. v. Scottsdale Ins. Co.*, 286 A.D.2d 679 (App. Div., 2nd Dept., 2001) and *Natural Therapy Acupuncture, P.C. v State Farm Mut. Auto. Ins. Co.*, 41 Misc. 3d 1230(A), N.Y.C. Civ. Ct., Kings Co., 2013).

After a thorough review of the evidence, I find that Applicant proved that the bill was timely mailed. As such, payment is overdue.

Accordingly, I find for Applicant.

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
	Sharsham Corp DBA Willis Pharmacy	11/02/23 - 11/02/23	\$2,679.60	\$2,149.59	Awarded: \$2,149.59
Total			\$2,679.60		Awarded: \$2,149.59

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/15/2024 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." 11 NYCRR §65-3.9(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." 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 at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 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 fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." *Id.*

- 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 NY
SS :
County of Erie

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

09/02/2025
(Dated)

Tasha Dandridge-Richburg

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:
e1d5087d1b8a1f9d4434cd85debb3961

Electronically Signed

Your name: Tasha Dandridge-Richburg
Signed on: 09/02/2025