American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Health Hub Pharmacy (Applicant)	AAA Case No.	17-25-1411-9041
	Applicant's File No.	BT25-320060
- and -	Insurer's Claim File No.	AD25021303
	NAIC No.	10413
Affirmative Direct Insurance Company (Respondent)		

ARBITRATION AWARD

I, Susan Mandiberg, 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: The EIP

1. Hearing(s) held on 04/13/2026
   Declared closed by the arbitrator on 04/13/2026

   Heather Landeros, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

   Gregory Etienne, Esq. from Abrams Fensterman, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,174.60**, 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 28-year-old male EIP was involved in the instant motor vehicle accident on 1/30/25. Presently in dispute is billing for prescription medication, consisting of cyclobenzaprine and diclofenac gel dispensed on date of service 3/19/25, for which Respondent interposes a "non-receipt" defense. Respondent also raises a Fee Schedule argument, asserting that the billing exceeded Fee Schedule mandates, which Applicant contests. The issue to be determined is whether Respondent's defenses are supported by the credible evidence. No policy exhaustion issues were raised regarding this billing.

4. Findings, Conclusions, and Basis Therefor

This case was decided after due consideration of the arguments of the parties via Zoom and after a thorough review of the submissions and the documents contained in the electronic case folder maintained by the American Arbitration Association, which are incorporated by reference herein. Presently in dispute is billing for prescription medication dispensed on 3/19/25 following a motor vehicle accident that took place on 1/30/25. Respondent asserts that it did not receive this billing prior to the filing of the AR-1 and further argues that the billing exceeds Fee Schedule guidelines.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered…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. In addition, Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Ortho. Rehab. a/a/o "I.B." v. Country-Wide Ins. Co., AAA Case No. 17-R-991-14272-3, stated, in relevant part, that "the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at [his/her] decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents." Furthermore, it is within the province of an arbitrator to determine what evidence to accept or reject and what inferences should be drawn based on the evidence. See: Mott v. State Farm, 55 NY2d 224 (1982).

The First Amendment of Regulation 68-D (11 NYCRR § 65-4), commonly referred to as "the Rocket Docket", provides, in pertinent part, that within thirty (30) calendar days after the American Arbitration Association advises respondent of its receipt of a request for arbitration, the respondent shall "provide all documents supporting its position on the disputed matter", or may request in writing for an additional 30 calendar days to respond". 11 NYCRR § 65-4.2 (3) (ii). "The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission". 11 NYCRR § 65-4.2 (3) (iii). After the written record is closed, any additional written submission can made "only at the request of or with the approval of the arbitrator". The submission of untimely evidence - at the very least within thirty (30) days of the date of a scheduled hearing - and without adequate notice to opposing counsel is unduly prejudicial. Moreover, an Arbitrator's choice not to allow late submissions has been upheld by the Courts. See: Matter of Mercury Cas. Co. v. Healthmakers Med. Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2nd Dept. 2009) and Matter of Global Liberty Ins. Co. v. Coastal Anesthesia Servs., LLC, 2016 NY Slip Op 08964 (1st Dept. 2016). All evidence submitted by either party less than thirty (30) days prior to the date of the scheduled Hearing is therefore precluded, in the interests of fairness, and shall not be considered.

Non-Receipt Defense:

It is well-settled that a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v. General Assurance Co., 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2nd Dept., June 2, 2006; See: Insurance Law §5106 a, Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD3d 742, 774 N.Y.S.2d 564 (2004); Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [2003 NY Slip Op 51701U (App. Term, 2nd & 11th Jud Dists.)]. See also: 11 NYCRR §65-1.1, Vista Surgical Supplies, Inc. v. Metropolitan Prop. and Cas. Ins. Co., 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006.

In support of its nonreceipt defense, Respondent argues that it did not receive Applicant's bill prior to Applicant's filing of its AR-1. In support of this contention, Respondent has submitted an affirmation from a claims examiner, Karizsma Reid. In relevant part, the affirmation states that she reviewed the file maintained in her office, as well as the PIP computer ledger and that the instant bill "was never received" by Respondent. However, as discussed with the parties at the time of the Hearing, Applicant has submitted proof of mailing for this billing, demonstrating emailing to this Respondent on 3/25/25, as denoted in the affidavit of the owner of the Applicant provider, Moisey Zargarov, PharmD. This email address was utilized "pursuant to instructions provided directly by Respondent". There is a copy of the 3/25/25 email in evidence, which is directed to claims@affirmativedirect.com with an attached pdf noting the EIP's name. Additionally, Applicant has submitted prior communications between Tadchiev Law and Respondent that confirmed that correspondence sent to this very email address was successfully received. I find Applicant's proof of mailing to be credible, which establishes Applicant's prima facie case of medical necessity.

Fee Schedule Defense:

Given the above finding, the next issue to consider is the Fee Schedule argument raised by Respondent. It is therefore noted that Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See: Robert Physical Therapy P.C. v. State Farm Mut. Auto. Ins. Co., 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co., 2006). See also: Power Acupuncture PC v. State Farm Mut. Auto. Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (Civil Ct., Kings Co., 2006). If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims exceeded the appropriate fee schedules, defendant's defense of noncompliance with the appropriate fee schedules cannot be sustained. See: Continental Medical P.C. v. Travelers Indem. Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dept., per curiam, 2006). A Respondent may interpose a defense in a timely denial that the claim exceeds the fees permitted by the Workers' Compensation schedules, but Respondent must, at minimum, establish by evidentiary proof, that the charges exceed that permitted by law. Abraham v. Country-Wide Ins. Co., 3 Misc.3d 130A, 787 N.Y.S.2d 678, 2004 NY Slip Op 50388U, 2004 N.Y. Misc. LEXIS 544 (App. Term, 2nd Dept. 2004). In addition, an Arbitrator is permitted to take judicial notice of the Worker's Compensation Fee Schedule. See: Kingsbrook Jewish Medical Center v.

Allstate Ins. Co., 61 AD 3d 13 (2nd Dept. 2009); LVOV Acupuncture PC v. Geico Ins. Co., 32 Misc. 3d 144 (A) (App. Term 2nd, 11th, and 13th Jud. Dists. 2011). Natural Acupuncture Health PC v. Praetorian Ins. Co., 30 Misc. 3d 132 (A), 2011 N Y Slip Op 50040 (U), (App. Term 1st Dept. 2011). A party seeking to have judicial notice taken should provide the Arbitrator/Court with sufficient information to permit the forum to take judicial notice, in the absence of which it is permissible to decline to take notice of the Fee Schedule. Megacure Acupuncture, P.C. v. Clarendon Natl. Ins. Co., 33 Misc.3d 141(A), 2011 NY Slip Op 52199(U) (App Term 2nd, 11th, & 13th Jud Dists., Nov. 30, 2011).

As discussed at the time of the Hearing, both Respondent's and Applicant's coder affirmations were submitted less than 30 days prior to the date of this hearing, resulting in preclusion. Although Respondent argues that the fees charged are excessive, pursuant to "The Micromedex Red Book" this source was not actually submitted into evidence, therefore, judicial notice cannot be reasonably taken. Indeed, given the evidence submitted in this case, and the paucity of timely submitted and substantiating evidence, I decline to take judicial notice.

Based upon the evidence submitted in this case, it is determined that Applicant's proof of mailing for the billing for date of service 2/24/25 is credible. Therefore, I find that Respondent's "non-receipt" defense for this billing is without merit and that Applicant has credibly established its prima facie case herein for this billing.

Conclusion:

After careful review of the totality of the credible evidence in this case, based upon the evidence submitted in this case and consideration of the arguments of counsel, it is determined that Respondent's non-receipt defense for this billing is unsubstantiated and is credibly rebutted by Applicant's proof of mailing. It is further determined that Respondent's Fee Schedule arguments are unsupported.

Accordingly, this claim is granted.

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**
	Health Hub Pharmacy	**03/19/25 - 03/19/25**	**$3,174.60**	**Awarded: $3,174.60**
Total			**$3,174.60**	**Awarded: $3,174.60**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/01/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the Applicant interest computed from the above-noted date, at a rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR §65-3.9(e).

C. Attorney's Fees

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

The insurer shall also pay the Applicant an attorney's fee based upon the amount awarded herein and the interest, as calculated in section "B" above, and in accordance with the relevant Regulations.

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 Nassau

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

04/15/2026
(Dated)

Susan Mandiberg

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:
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Electronically Signed

Your name: Susan Mandiberg
Signed on: 04/15/2026