

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Vivid Acupuncture, PC  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-24-1361-2031

Applicant's File No. OS-92563

Insurer's Claim File No. 0694066366

NAIC No. 19232

### 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 06/08/2026  
Declared closed by the arbitrator on 06/08/2026

Rachel Stein, Esq. from Law office of Olga Sklyut, PC participated virtually for the Applicant

Kevin Lynch, Esq. from Law Offices Of Richard Schoenberg participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,057.93**, 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 37 year old EIP reported involvement in a motor vehicle accident on November 3, 2022; claimed related injury and underwent acupuncture treatment provided by the applicant from November 17, 2022 to March 7, 2023. The claim included charges of \$12.99 or PPE supplies/services for each of 14 dates of service.

The applicant submitted a claim for these medical services, payment of which was delayed pending responses to verification requests and then denied after 120 days from the initial date of the request for verification.

The verification requested was for documents and information related to this claim and to the corporate structure and business practices of the applicant.

**The issues to be determined at the hearing are:**

**Whether the respondent established its 120 day defense.**

**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.

If an insurer requires any additional information to evaluate the proof of claim, such request for verification must be made within 15 business days of the receipt of the bill in order to toll the 30 day period to pay or deny the claim. See 11 NYCRR 65-3.5(b); See also New York Hosp. Med. Ctr. of Queens v. Allstate Ins. Co., 2014 NY Slip Op 00640 (2d Dept. 2014.)

Where there is a timely original request for verification, but no response to the original request for verification is received within 30 days, or the response to the verification request is incomplete, then the insurer, within 10 calendar days after the expiration of that 30 day period, must follow up with a second request for verification. Id.

If there is no response to the second or follow up request for verification, the time in which the insurer must decide whether to pay or deny the claim is indefinitely tolled. Id.

Therefore, when a no-fault medical service provider fails to respond to the requests for verification the claim is premature and should be denied without prejudice.

#### 120 day denial

However, pursuant to 11 NYCRR §65-3.5(o) an insurer may issue a denial if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all such verification under applicant's control or possession or written proof providing reasonable justification for the failure to comply.

The parties have a duty to communicate with each other. The purpose of the No-Fault statute is to ensure prompt resolution of claims submitted by parties injured in motor vehicle accidents. The parties' obligations are centered on good faith and common sense. Any questions concerning a communication should be addressed by further communication, not inaction. Dilon Medical Supply Corp. v. Travelers Ins. Co., 7 Misc.3d 927, 796 N.Y.S.2d 872 (Civ. Ct. Kings Co. 2005.)

The response to a verification request that is "arguably responsive" places the burden to take further action upon the respondent. All Health Medical Care, P.C. v. GEICO, 2 Misc.3d 907 (N.Y. City Civ. Ct. 2004.) Moreover, as long as applicant's documentation is "arguably responsive" to an insurer's verification request, the insurer must act affirmatively once it receives a response to its verification request. Media Neurology, P.C. v. Countrywide Ins. Co., 21 Misc.3d 1101 (N.Y. City Civ. Ct. 2005.)

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, 11<sup>th</sup> & 13<sup>th</sup> Jud Dists (2017.)

In this matter, the respondent issued timely requests for verification to which the applicant served responses on March 1, 2023, April 4, 2023, April 26, 2023 and May 25, 2023.

The respondent did not submit proof of mailing of the verification requests. Nevertheless, since the applicant responded it is evident that the requests were received.

However, the respondent did not submit evidence from someone with personal knowledge that a response was not received from the applicant.

Based on the foregoing, the respondent has failed to establish its 120 day defense.

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

Fee schedule

Billing for PPE for all dates of service

The applicant billed a total of \$181.86 under CPT code 99072 for PPE supplies and services provided on each date of service. The respondent denied payment for the PPE on the grounds that: "[t]his procedure was performed for a condition not related to the motor vehicle accident." The respondent asserts that these supplies are not reimbursable. The applicant contends that these supplies were necessary to treat the EIP due to the COVID-19 pandemic and are therefore reimbursable as billed.

According to the OGC opinion letter dated January 1, 2007 regarding No Fault Health Service Reimbursement, only qualifying professional health services licensed under New York Law and provided to the claimant in the treatment of his/her injuries are reimbursable in no-fault. See also Ground Rule 17 of the New York State Worker's Compensation Physical Medicine Fee Schedule.

The applicant did not submit any documentation to refute the respondent's fee schedule defense.

I find that the applicant is not entitled to charge for the PPE supplies/services under CPT code 99072. The assignee is only entitled to the rights to reimbursement allowed to the assignor. See Rubin v. Empire Mut. Ins. Co., 25 N.Y.2d 426 at 429. CPT code 99702 is a new code adopted by the AMA during the COVID pandemic which is not a separately covered expense. Medicare has barred reimbursement for these services and views PPE supplies/services as a general expense incurred in running a medical office like, for example hand sanitizing gels, paper cloth covers utilized on patient examining tables, cleaning supplies, gloves, face shields, face masks, etc.) used generally in a medical office setting and not as a separate supply provided to the patient. CMS has stated that payment for the items/services described by CPT code 99072 is "always bundled into payment for other services and payment for them is subsumed by the payment for the services to which they are incident." Finally, CPT code 99072 is not contained in the New York Workers' Compensation Medical Fee Schedule and is therefore not reimbursable as charged.

Based on the foregoing, the respondent has established its fee schedule defense regarding reimbursement for the PPE charges at issue.

**Therefore, the respondent has established its fee schedule defense for the PPE supplies/services at issue.**

**Accordingly, the applicant is awarded \$876.07 for the office visits and acupuncture treatment at issue and the remainder of 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Vivid Acupuncture, PC	11/17/22 - 03/07/23	\$1,057.93	Awarded: \$876.07
<b>Total</b>			<b>\$1,057.93</b>	<b>Awarded: \$876.07</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/15/2024 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." 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 30<sup>th</sup> 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.

07/07/2026  
(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:**  
d701fa2d7b81aa6c41e8bec395491b46

**Electronically Signed**

Your name: Anne Malone  
Signed on: 07/07/2026