

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Frederick Community Pharmacy Inc
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-25-1383-3740

Applicant's File No. DK24-513374

Insurer's Claim File No. 0761003441

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 07/27/2026
Declared closed by the arbitrator on 07/27/2026

Henry Guindi, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Jackie Zurmuhlen, Esq. from Law Offices Of Richard Schoenberg participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,369.00**, 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 EIP reported involvement in a motor vehicle accident on July 5, 2024; claimed related injury and received Diclofenac gel provided by the applicant on August 22, 2024.

The applicant submitted a claim for this topical prescription medication, partial payment of which was timely made by the respondent based upon its determination of the correct reimbursable amount pursuant to the New York Workers' Compensation Medical Fee Schedule.

The issue to be determined at the hearing is 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.

To prevail in a fee schedule defense, the respondent must demonstrate by competent evidentiary proof that applicant's claims were in excess of the appropriate fee schedules, or otherwise respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Co., 11 Misc.3d 145(A) (App. Term 1st Dept. 2006.)

An insurer fails to raise a triable issue of fact with respect to a defense that the fees charged were not in conformity with the Workers' Compensation fee schedule when it does not specify the actual reimbursement rates which formed the basis for its determination that the claimant billed in excess of the maximum amount permitted. See St. Vincent Medical Services, P.C. v. GEICO Ins. Co., 29 Misc.3d 141(A), 907 N.Y.S.2d 441 (App. Term 2d, Dec. 8, 2010.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and often requires testimony and evidence beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the former scenario and does not require an expert opinion.

The respondent supported its fee schedule defense with a copy of the relevant portion of the "Redbook."

The applicant provided a copy of a check in the amount of \$1,897.14 which was timely issued on September 12, 2024 for the prescription medication at issue based on the appropriate amount for the prescription medication as established in the "Redbook."

According to the respondent's submission, the check was never cashed by the applicant.

Based on the foregoing, the respondent agreed to re-issue payment for the prescription medication at issue. There was no argument presented to establish that the payment was not timely. Since the check was timely issued no interest due.

Accordingly, payment of \$1,897.14 will be issued to the applicant for the claim for date of service August 22, 2024.

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
	Frederick Community Pharmacy Inc	08/22/24 - 08/22/24	\$2,369.00	Awarded: \$1,897.14
				Awarded:

Total	\$2,369.00	\$1,897.14
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- B. The insurer shall also compute and pay the applicant interest set forth below. 01/23/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the check was timely issued no interest is due.

C. Attorney's Fees

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

Since the check was timely issued no attorneys' fees are due.

- 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.

07/30/2026
(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:
1bfa557aa7a1e10d4c0b102917e796b0

Electronically Signed

Your name: Anne Malone
Signed on: 07/30/2026