

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bay Health Pharmacy, Inc.
(Applicant)

- and -

Arch Insurance Company
(Respondent)

AAA Case No. 17-26-1439-9339

Applicant's File No. 607680

Insurer's Claim File No. 25J93M570498

NAIC No.

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 09/08/2026

Declared closed by the arbitrator on 09/08/2026

David Forman, Esq. from Leon Kucherovsky Esq. participated virtually for the Applicant

No appearance from CCMSI failed to appear for the Respondent

2. The amount claimed in the Arbitration Request, **\$992.00**, 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 55 year old EIP was involved in a motor vehicle accident on February 15, 2025; claimed related injury and received Methyl Salicylate provided by the applicant on April 2, 2025.

The applicant submitted a claim for this prescription medication for which the respondent made no submissions or appearance at the hearing.

The issue to be determined at the hearing is whether the applicant established its *prima facie* entitlement to no fault benefits for claim at issue.

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.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the untimely submission of the bill/bills at issue if such defense is not raised in a timely denial. See New York Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept. 2001.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that late submission of the bill/bills will be excused where the applicant can provide a reasonable justification of the failure to timely submit the bill/bills. 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007.)

In the instant matter, the applicant submitted a copy of the bill dated June 27, 2025 for the prescription medication at issue. The NF-3 states that these services were provided to the EIP on April 2, 2025.

The proof of mailing of this bill submitted by the applicant is a certificate of mailing stamped by the US Postal Service and dated June 30, 2025.

Based on the foregoing, the applicant has failed to establish its *prima facie* entitlement to no fault benefits for the prescription medication at issue since it its own proof of mailing established that the bill for date of service April 2, 2025 is dated June 27, 2025 (85 days after the date of service) and was sent on June 30, 2025 (87 days after the date of service.)

However, the respondent did not submit a denial of this bill and did not advise the applicant that late submission of the bill will be excused where it can provide a reasonable justification for the failure to timely submit the bill at issue. See New York Presbyterian Hospital and Radiology Today, supra.

Therefore, the respondent has not established any defense to this claim.

Accordingly, the applicant is awarded \$992.00 in disposition of this claim.

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
	Bay Health Pharmacy, Inc.	04/02/25 - 04/02/25	\$992.00	Awarded: \$992.00
Total			\$992.00	Awarded: \$992.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/29/2026 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 30th 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.

09/12/2026
(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:
53029d7760413eab8a05e441a353376b

Electronically Signed

Your name: Anne Malone
Signed on: 09/12/2026