American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hempstead Chemist Inc. (Applicant)	AAA Case No.	17-26-1462-9953
	Applicant's File No.	26-37
- and -	Insurer's Claim File No.	1M01M014100250
	NAIC No.	Self-Insured
Hertz Vehicles, LLC (Respondent)		

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 11/23/2026
   Declared closed by the arbitrator on 11/23/2026

   Gabriel Sulaymanov, Esq. from Sulaymanov Law Group, P.C. participated virtually for the Applicant

   Timothy Dauz, Esq. from Gallo Vitucci Klar, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,340.40**, 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 38 year old EIP reported involvement in a motor vehicle accident on August 21, 2025; claimed related injury and received Naproxen provided by the applicant on November 21, 2025.

   The applicant submitted a claim for this oral prescription medication, payment of which was denied by the respondent based on its finding that benefits are not payable as the EIP failed to comply with the policy terms by failing to appear for two scheduled examinations under oath.

The claim was also denied based on the peer review by Dr. Sidhwani submitted by the respondent with a rebuttal by Dr. Gressel.

The issues to be determined at the hearing are:

Whether the respondent established that the applicant violated a condition precedent to coverage.

Whether the respondent's denial based on the applicant's failure to appear for an EUO can be sustained.

Whether the respondent established that the prescription medication at issue was not medically necessary.

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.

<u>No show EUO</u>

It is the respondent's burden to prove that the bills in question were properly denied. Under 11 NYCRR 65-1.1, which prescribes the No-Fault Mandatory Personal Injury Protection Endorsement which must be included in all owners polices of motor vehicle liability insurance issued in New York, the "Conditions" section of the endorsement contains a "Proof of Claim" provision which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same…"

If the respondent requires an EUO of the applicant/EIP it has 15 business days after receipt of proof of claim in which to send correspondence requesting the examination under oath. If the party fails to attend, within 10 calendar days of the no-show the insurer must contact the party from whom the EUO is requested to give the party a second opportunity to attend.

If the party fails to appear at the rescheduled EUO, an insurer may issue a denial of pending claims based upon the failure to meet the condition for coverage in not submitting to the requested EUO, as required under the prescribed endorsement. There is no requirement in the regulation that the denial must state the specific reason(s) why the insurer required the EUO.

The respondent alleges to have attempted to schedule the EUO of the EIP, who failed to appear.

The respondent submitted copies of letters which were sent to the EIP and his attorneys dated November 18, 2025 and December 12, 2025 for EUOs scheduled on December 4, 2025 and January 5, 2026, respectively.

The scheduling letters were proper as to form and there is no evidence submitted to establish that the letters were improper in any way, or that they were sent to an improper address. Based upon the policy violation, a timely denial was issued.

The respondent submitted affirmations to support the scheduling of the EUOs and mailing of the scheduling letters. In addition, the respondent provided affirmations by the attorneys who were scheduled and available to conduct the EUOs on December 4, 2025 and January 5, 2026 to support its contention that the EIP failed to appear for the two scheduled examinations under oath.

The policy breach in this case was instituted by the EIP. It was his failure appear at the two scheduled examinations under oath that caused the denial of the claim. The EIP's to appear for the examinations under oath breached a condition precedent to coverage. Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 82 A.D.3d 559, 560 (N.Y. App. Div. 1st Dept. 2011) held that:

When an EIP or applicant failed to appear for the requested IMEs,

[EUOs] [the insurer] had the right to deny all claims

retroactively to the date of loss, regardless of whether the denials

were timely issued…A denial premised on breach of a condition

precedent to coverage voids the policy ab initio and, in such case,

the insurer cannot be precluded from asserting a defense premised

on no coverage.

The EIP presented no evidence that he did not receive the letters scheduling the examinations under oath or to refute the proof that he did not appear for the examinations under oath on December 4, 2025 and January 5, 2026.

Based upon the proof presented, I find in that the respondent established that the EIP violated a condition precedent to coverage and that its denial can be sustained.

Under these circumstances, the issue of lack of medical necessity is moot.

Accordingly, 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 claim is DENIED in its entirety

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.

11/26/2026
(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:
1c5da6a9b1a43ecaaeeab091d3931212

Electronically Signed

Your name: Anne Malone
Signed on: 11/26/2026