

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

AMA Supply
(Applicant)

- and -

Maya Assurance Company
(Respondent)

AAA Case No. 17-21-1222-3430

Applicant's File No. N/A

Insurer's Claim File No. 210206-02

NAIC No. 36030

ARBITRATION AWARD

I, Patricia Daugherty, 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: Assignor

1. Hearing(s) held on 06/03/2022
Declared closed by the arbitrator on 06/03/2022

Jeffrey Datikashvili from The Sigalov Firm PLLC participated in person for the Applicant

Christine Lee from De Martini & Yi, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$469.80**, 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

Assignor, "AM," was involved in a motor vehicle accident on May 11, 2021. At issue in this case is a claim in the amount of \$469.80 for an LSO, cervical pillow and massager dispensed to Assignor on July 2, 2021. Respondent denied Applicant's claim based upon Applicant's failure to appear for an Examination Under Oath (EUO). The issue to be determined is whether Respondent established its EUO no show defense.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

To establish an EUO no show defense a carrier must demonstrate 1.) the timely mailing of the EUO scheduling letters; 2.) the non-appearance of the party to whom the demand was made; and 3.) a timely denial of the claim. Interboro Ins. Co. v. Clennon, 113 AD3d 596 (2nd Dept 2014); Barakat Med. Care, P.C. v. Nationwide Ins. Co., 49 Misc 3d 147(A) (App Term 2d 11th and 13th Jud Dists. 2015) Gentlecare Ambulatory Anesthesia Servs. v. Geico Ins. Co., 57 Misc 3d 150(A)(App Term 2d 11th and 13th Jud Dists. 2017); see also Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 AD3d 720 (2nd Dept. 2006).

A request for an examination under oath must be made in accordance with the procedures and time frames set forth in the no-fault regulations. Acupuncture Approach, P.C., v. Allstate Ins. Co., 2015 NY Slip Op 50318(U) (App.Term 1st Dept. 2015).

Respondent received the subject bill on July 27, 2021. Through correspondence dated August 2, 2021 Respondent tolled its time to pay or deny the bill by seeking an EUO of Applicant. The letter scheduled Applicant's EUO for August 16, 2021 at 11:15 a.m. There is a follow-up request dated August 17, 2021 scheduling Applicant's EUO for September 8, 2021 at 10:30 a.m. On September 13, 2021 Respondent denied the bill based upon Applicant's failure to appear for an EUO on August 16, 2021 and September 8, 2021.

Applicant's counsel argues that he personally emailed counsel for Respondent on August 14, 2021 stating that Applicant was unable to appear for the August 16, 2021 EUO and requested that the EUO be held between September 20, 2021 and September 25, 2021. Counsel provided an affirmation and a copy of his email sent to Respondent's counsel. At the hearing, Respondent's counsel acknowledged that the email address to which Applicant's counsel sent the rescheduling request is an accurate email for Respondent's counsel. However, neither Respondent's counsel nor Respondent responded to the same.

In light of the foregoing, I find that Respondent's denial of claim based upon Applicant's failure to appear for an EUO on August 16, 2021 and September 8, 2021 was improper. Applicant's failure to appear cannot be deemed a willful noncompliance as its counsel notified Respondent's counsel of its inability to appear on the first scheduled date and provided reasonable alternate dates to conduct the EUO.

Based on the foregoing, Applicant's 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
	AMA Supply	07/02/21 - 07/02/21	\$469.80	Awarded: \$469.80
Total			\$469.80	Awarded: \$469.80

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/11/2021 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. Pursuant to 11 NYCRR 65-3.9(c) If 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 Department of Financial Services regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken. A plain reading of this provision indicates that if an applicant requests arbitration within 30 days of receiving a denial of claim, then interest is not tolled. When arbitration is not requested within 30 days of receiving a denial of claim, the interest is tolled until "such action is taken." The

language used refers to the conduct of the Applicant. When Applicant acts, the interest is no longer tolled. The act of requesting the arbitration triggers the accrual of interest. As such interest shall accrue as of the date the AR-1 was filed. To the extent that the AR-1 was filed outside the business hours of the forum, then interest shall accrue the following business day.

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee, in accordance with 11 NYCRR §65-4.6. Therefore, the insurer shall pay the applicant an attorney's fee of 20% of benefits plus interest, with no minimum fee and a maximum fee of \$1,360.00. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 New York
SS :
County of Suffolk

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

06/26/2022
(Dated)

Patricia Daugherty

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:
ec9091ab354bc3dab865388eaaffe1c0

Electronically Signed

Your name: Patricia Daugherty
Signed on: 06/26/2022