

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Westchester Medical Center
(Applicant)

AAA Case No. 17-15-1011-2576
Applicant's File No.

- and -

Allstate Insurance Company
(Respondent)

Insurer's Claim File No. 03541809512LA
NAIC No. 19232

ARBITRATION AWARD

I, John Kannengieser, 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 11/5/2015
Declared closed by the arbitrator on 11/05/2015 11:11 AM

Gregory Henig participated in person for the Applicant

Joseph Farrell of Peter Merani Office participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 20,000.00**, 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

Was Respondent's partial payment and denial of the balance proper based on Insurance Law 5103(b)(2) and the fee schedule?

4. Findings, Conclusions, and Basis There for

The 26 year old male EIP (YP) was involved in an accident on 1/9/15 and thereafter received medical treatment for his injuries. The bill in dispute is for hospital services including emergency room, surgery, supplies, drugs, radiology, diagnostics and implants from 1/10/15 thru 1/16/15 in the total amount of \$47,011.31, partially paid in the amount

of \$27,011.31, leaving an amount in dispute of \$20,000.00. Respondent initially delayed the bill and thereafter denied the balance remaining on the bill as it was paid up to the point of stabilization. Respondent also raised a fee schedule defense.

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party, and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

Plaintiff established a prima facie case by the submission of statutory forms for proof of claim and the amount of the loss (Park Health Ctr. V. Prudential Prop & Cas. Ins. Co., NYLJ Dec. 14, 2001). The burden then becomes Respondent's to show otherwise. No fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested pursuant to section 65-3.5.

The claim was timely denied by Respondent.

Respondent's denial states as follows: "As per medical audit by Managed Care Network payment has been made up to point of stabilization as patient's ethanol level was over the legal limit at .237. No fault coverage does not apply to personal injury sustained by any person as a result of operating a motor vehicle while in an intoxicated condition. Reimbursement is made up to point of stabilization which occurred when patient was taken out of ICU. In addition, as per medical audit by Managed Care Network payment is recommended as per NYS guidelines and rates published 1/2015".

Insurance Law section 5103(b)(2) was amended in 2011 and now provides for a hospital to be paid for necessary emergency health care services when a patient is intoxicated or on drugs, and states that "... an insurer shall not exclude such person from coverage with respect to necessary emergency health services rendered in a general hospital, as defined in subdivision 10 of section 2801 of the Public Health Law...". Applicant herein is a general hospital as defined in that section, and the treatment to the EIP was for necessary emergency health services. The word "stabilization" used in Respondent's denial is not used in Insurance Law section 5103(b)(2).

The DRG billing rate (Diagnostic Related Groups) is mandated for hospital billing. The DRG code corresponds to the billing rate, which is determined by a complex formula. Applicant submits an affidavit dated 6/25/15 of Susan Weinstein, an account representative and coding expert employed by Hospital Receivables Systems Inc., for inpatient accounts of Applicant. Ms. Weinstein recites her background and training, and concludes that the proper billing herein is the DRG rate of \$47,011.31. A DRG Master

Output report with all calculations is included with the affidavit. Ms. Weinstein states that a DRG code is arrived at which corresponds to the rate the hospital must charge, regardless of the length of the stay and the extent of medical treatment. On the EIP's admission, the DRG code was 912-3 which was calculated by a Master Output DRG report for a corresponding rate of \$47,011.31. The admission was from 1/10/15 through 1/16/15. Ms. Weinstein re-ran DRG 912-3 with the EIP's stay as if it had been four days instead of six days (the length of time the EIP was in the ICU), and the DRG rate came out the same at \$47,011.31. The reason for this is that DRG rates are primarily determined based on the injuries, as well as the admitting diagnosis and discharge diagnosis. The length of stay and treatment rendered have a minimal effect on the DRG assigned, and the proper billing was \$47,011.31.

Respondent submits an unsigned Nurse Audit by Susan Hammann, RN, BSN, CDMS, CCM, in which she states that the emergency services when broken down are higher than the DRG cost, and it is recommended that the DRG amount be paid. She then *estimates* the charges per the Workers' Compensation Fee Schedule and indicates that the amount to be paid is \$27,011.31.

After reviewing all of the records and listening to the arguments of the parties, I find in favor of Applicant in the amount of \$20,000.00. I find that the treatment to the EIP herein were necessary emergency health services rendered in a general hospital. I also find that the proper DRG rate is \$47,011.31, and as Respondent paid \$27,011.31, the difference of \$20,000.00 is due to Applicant. I am persuaded by the affidavit of Susan Weinstein as well as the DRG Master Output report.

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.

	Amount Claimed	Amount Awarded
Medical	\$ 20,000.00	\$ 20,000.00
TOTAL	\$ 20,000.00	\$ 20,000.00

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 05/04/2015 16:05 PM, which is a relevant date only to the extent set forth below.)

The Respondent shall compute and pay to the Applicant the amount of interest from the aforesaid filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30 day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9 (c).

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D).

Applicant is awarded statutory attorney fees pursuant to the No-Fault regulations. See, 11 NYCRR §65-4.6. The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(d). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360." Id.

- 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 Nassau

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

12/03/2015
(Dated)

John Kannengieser

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:
1f06be8c4404bb14047ee7bd652d69e7

Electronically Signed

Your name: John Kannengieser
Signed on: 12/03/2015