

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nassau Univ Medical Center/Nassau  
Healthcare Corp  
(Applicant)

AAA Case No. 17-14-1003-6938  
Applicant's File No.

- and -

Liberty Mutual Fire Insurance Company  
(Respondent)

Insurer's Claim File No. LA000-028692790-02  
NAIC No.

### **ARBITRATION AWARD**

I, Anthony Joseph Bianchino, 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: Patient

1. Hearing(s) held on 03/07/2016  
Declared closed by the arbitrator on 03/07/2016

Emily Bennett, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

Denis Perugini, claims examiner from Liberty Mutual Fire Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,409.97**, 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 issue in dispute is whether the patient's, a 30 year old male, intoxication precludes the Applicant from being reimbursed for the emergency room services received on December 26, 2013.

4. Findings, Conclusions, and Basis Therefor

The amount in dispute is \$3,409.97 which is for emergency room services.

All documents contained in the Electronic Case Folder at the time of the Hearing have been considered.

This is a motor vehicle accident which occurred on December 26, 2013. As a result of the accident the patient was taken to the Applicant's emergency room and received treatment.

The Respondent has denied the Applicant's claim claiming that since the patient, who was the driver, was intoxicated at the time of the accident there is no coverage for the patient's treatment. In support the Respondent has submitted the police report and the toxicology report. The police report indicates that at the time of the accident the patient was the driver of the motor vehicle. The police report describes the accident as a one car accident with the vehicle hitting a tree and fence, overturning and ejecting the driver. In addition the police report states that the patient was "BELIEVED TO HAVE BEEN INTOXICATED FROM ALCOHOL CONSUMPTION." The toxicology report which the Respondent has submitted shows that the patient was positive for Cannabinoids, Cocaine and Ethanol.

Clearly based upon the accident report and the toxicology report the patient was in fact intoxicated at the time of the accident. In addition since this was a one car accident where the vehicle being driven by the patient hit a tree and fence, overturned and ejected the driver, I find that the patient's intoxicated condition was the proximate cause of the accident.

At the Hearing the Applicant's attorney argued that while the patient may have been intoxicated at the time of the accident since the services in dispute were emergency health care services rendered at a hospital there is coverage for this claim. In support the Applicant's attorney relies on New York State Insurance Law Section 5103 (b) (2) which states:

An insurer may exclude from coverage by subsection (a) hereof a person who:

(2) is injured as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug within the meaning of section eleven hundred ninety-two of the vehicle and traffic law; provided, however that the insurer shall not exclude such person from coverage with respect to necessary emergency health services rendered in a general hospital, as defined in subdivision ten of section two thousand eight hundred one of the public health law, including ambulance services attendant thereto and related medical screening....

Clearly based upon Section 5103 (b) (2) of the New York State Insurance Law an insurer must provide No-Fault coverage for "necessary emergency health services" an intoxicated driver/patient receives at a hospital.

Here based upon the bill submitted by the Applicant I find that the Applicant has made a prima facie showing that the services the patient received on December 26, 2013 in the emergency room were "necessary emergency health services". As such the burden now shifts to the Respondent to prove that the emergency room services in dispute were not "necessary emergency health services".

However since the Respondent has submitted nothing from a medical professional which states that the emergency room services the patient received on December 26, 2013 were not "necessary emergency health services" I find that the Respondent has not rebutted the Applicant's prima facie showing that the emergency room services in dispute were "necessary emergency health services". Therefore since the emergency room services in dispute were "necessary emergency health services" based upon Section 5103 (b) (2) of the New York State Insurance Law the Respondent must provide No-Fault coverage for these services. As such I find that the Applicant is entitled to be reimbursed for the emergency room services in dispute.

According the Applicant is entitled to be reimbursed \$3,409.97 which is for emergency room services the patient received on December 26, 2013.

This is in full disposition of all No-Fault benefit claims submitted to the 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.

	<b>Amount Claimed</b>	<b>Amount Awarded</b>
Medical	\$ 3,409.97	\$ 3,409.97
<b>TOTAL</b>	<b>\$ 3,409.97</b>	<b>\$ 3,409.97</b>

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 01/20/2015, which is a relevant date only to the extent set forth below.)

Since the claim in question arose from an accident that occurred on or after April 5, 2002 and since the Respondent timely denied the Applicant's claim pursuant to LMK Psychological Servs., P.C. v State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481, decided on April 2, 2009, by the Court of Appeals, the insurer shall compute and pay the Applicant the amount of interest computed from the date the AR-1 was deemed filed with the American Arbitration Association as listed above, at the rate of 2% per month, simple, 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

The Applicant's attorney is entitled to one attorney fee in accordance with 11 NYCRR 65-4.6(e) and as interpreted by the Court of Appeals in LMK Psychological Servs., P.C. v State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481, decided on April 2, 2009 for all claims submitted to and Awarded in this Arbitration. 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, Anthony Joseph Bianchino, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

03/07/2016  
(Dated)

Anthony Joseph Bianchino

**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:**  
d20e3f805adea3de3cb22e7fd05ad569

**Electronically Signed**

Your name: Anthony Joseph Bianchino  
Signed on: 03/07/2016