

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Westchester Medical Center  
(Applicant)

AAA Case No. 17-15-1015-1692  
Applicant's File No. RFA15-180373

- and -

New York Central Mutual Fire Insurance  
Company  
(Respondent)

Insurer's Claim File No. 2014626059-0140038800  
NAIC No. 14834

**ARBITRATION AWARD**

I, Marcelle Brandes, 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 05/03/2016  
Declared closed by the arbitrator on 05/03/2016

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

Peter Young, Esq., from Gullo & Associates, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 12,040.21**, 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

Applicant's Assignor, a 22 year old male, was reportedly injured in a one car crash on October 15, 2014. At issue here, Applicant seeks No Fault benefits for emergency hospital services, date of service October 15, 2014. Respondent denied payment because Assignor was operating the motor vehicle in an intoxicated condition. Another issue in dispute is the fee schedule. Applicant billed \$12, 040.21; Respondent counters that the appropriate fee is \$2042.32. Surprisingly, the parties agree on the correct payment for 26 codes contained in Applicant's bill. There is only one Code that the parties disagree, G0378, "Observation Room." Applicant billed \$10,094.00 under this code. Respondent

correctly point out that this code does not exist in the Workers Compensation Fee Schedule. Respondent's response is to submit a letter from its attorney stating that Applicant should only be allowed \$101.00 for this code.

#### 4. Findings, Conclusions, and Basis Therefor

The 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. NYCRR 65-4.5 (o) (1) (Regulation 68-D).

This decision is based upon the oral arguments and written submissions of the respective parties. No witnesses appeared or testified at the hearing. I have reviewed the documents submitted to the Electronic Case Folder (ECF) as of the date the record was closed.

Applicant established a prima facie case by proof that it submitted its claim, setting forth the fact and the amounts of the losses sustained, and that payment of no-fault benefits was overdue (see Insurance Law § 5106[a]; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc.3d 128[A], 2003 N.Y. Slip Op 51701[U] [App Term, 2d & 11th Jud Dists] ).

New York Insurance Law Sec. 5103(b)(2) provides that an insurer may exclude from coverage a person who is injured as a result of operating a motor vehicle in an intoxicated condition within the meaning of Section 1192 of the Vehicle and Traffic Law. That section provides that a blood alcohol content of .08 of one per centum or more by weight of alcohol in a person's blood constitutes driving while intoxicated per se. *Westchester Medical Center v. Government Employees Insurance Company*, 77 AD 3d 737, 909 NYS 2d 112 (2d Dept., Oct. 12, 2010). Further, an insurer who seeks to disclaim benefits on intoxication grounds must not only show that an insured was intoxicated, the insurer must also show that the intoxication was a proximate cause of the accident. *Westchester Medical Center v. Progressive Insurance Company*, 51 AD 3d 1014, 858 NYS 2d 754 (2d Dept. 2008).

The police report states:

Accident investigation revealed vehicle one was traveling West around a curve uphill. Instead of going around the bend vehicle one kept going straight. The vehicle front end struck the ditch and bounced the vehicle back into the middle of the roadway, landing it on its roof. On arrival the driver was not in the vehicle but was hiding in the woods. Driver of vehicle one report he was 'drunk' and does not know what happened. All he could remember is that he was hanging by his seat belt and was able to get himself out of the vehicle. Driver transported to hospital and arrested, vehicle towed.

In 2010, effective January 26, 2011, the New York State legislature passed a law amending the mandatory PIP endorsement's intoxication exclusion by requiring New York no fault insurers to pay for "necessary emergency health services rendered in a general hospital" to persons injured as a result of operating a motor vehicle while in an intoxicated condition or while the person's ability to operate the vehicle is impaired..." Insurance Law Sec. 5103(b)(2).

The Department of Financial Services clarified the amendment in Circular Letter No 4 (2011) (January 12, 2011):

For the purposes of compliance with Chapter 303, the Department interprets "necessary emergency health services" to mean services rendered to a person by or under the supervision of a physician, paramedic, or emergency medical technician to treat the onset of sudden pain or injury and to stabilize the person, provided the person is transported directly from the scene of the motor vehicle accident to the general hospital. Pursuant to this interpretation, once the sudden pain or injury is treated and the person is stabilized, (generally in the emergency room) the no-fault insurance coverage ceases. In order to facilitate timely payment, a hospital should specify what portion of the bill consists of "necessary emergency health services." If the hospital does not specify what portion consists of "necessary emergency health services," then a no-fault insurer may request this information.

The New Paltz Rescue Squad's Dispatch report is submitted by Applicant, as part of its medical reports (P 16 of 45). This report states Assignor was first taken to the police station, where he was first seen by EMS. At that time Assignor admitted he was under the influence of alcohol, he stated he had 4-5 beers, 1-2 shots of an unknown liquor and 1-2 Old English. Police accompanied Assignor to the hospital.

Applicant is Westchester Medical Center. According to Applicant's medical records, Applicant was not the first hospital Assignor was taken to:

The patient is a 22 year old male who was involved in a motor vehicle accident. The patient apparently flipped his car. It is unclear whether or not he lost consciousness. He was brought to Mid Hudson Regional Hospital. At Mid Hudson Regional, the patient was verbally abusive and combative. The patient underwent a full workup. He underwent imaging studies of the thoracic spine. This study revealed concavity at the superior aspect of T5. However, upon further review this did not appear to be a fracture but more likely a developmental variant.

After a careful and thorough review of the evidence, it is hereby determined that Applicant's claim is denied. Respondent has established that Assignor was intoxicated at the time of the accident (Assignor's statements to the police and EMS), and that this single car crash was the proximate cause of the accident, (police report). Moreover, the medical services provided to Assignor at Westchester Medical Center does not fall within the "necessary emergency health services" as defined by the Department of

Finance circular letter inasmuch as Assignor was not transported directly from the scene of the motor vehicle accident to Applicant's facility.

Rather, Assignor was initially taken to the police department, then to Mid Hudson Regional Hospital, before being transported to Applicant, Westchester Medical Center. Hence, Respondent has established that the services provided by Applicant were not eligible for no fault reimbursement, and Applicant has failed to refute that evidence.

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 New York

SS :

County of Nassau

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

05/30/2016  
(Dated)

Marcelle Brandes

**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:**  
415b32d6ab0e90ff386411eec5309de6

### **Electronically Signed**

Your name: Marcelle Brandes  
Signed on: 05/30/2016