American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Erie County Medical Center (Applicant)	AAA Case No.	17-15-1022-0353
	Applicant's File No.	
- and -	Insurer's Claim File No.	0491673330101023
	NAIC No.	35882
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Mona Bargnesi, 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: Claimant ["AM"]

1. Hearing(s) held on 04/13/2016, 02/07/2017
   Declared closed by the arbitrator on 02/07/2017

   Ron F. Wright, Esq., of counsel from Russell Friedman & Associates LLP participated in person for the Applicant

   Emily Cobb, Esq. from Law Office of Daniel Archilla participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 29,793.28**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The parties agreed to amend the amount in dispute downward to **$14,919.13** to reflect the proper DRG rate.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   Whether Applicant is entitled to medical treatment provided from December 7 through 17, 2014.

Respondent denied reimbursement based on Applicant's failure to comply with its verification requests within 120 days.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's ADR Center as of the date of the hearing. These submissions are the record in this case.

This case arises out of a motor vehicle collision which occurred on December 7, 2014. The 19 year-old allegedly intoxicated unrestrained driver allegedly sustained an injury to his head after striking a utility pole. He was unresponsive, and was taken by Mercy flight to Erie County Medical Center.

CT scans and laboratory tests were performed. A CT scan of the head revealed a right frontal subarachnoid with subdural hemorrhage. He was admitted to the TICU. Fractures and contusions were also noted.

On January 19, 2015, Respondent sent correspondence to Applicant requesting a "copy of the patient's ER/Hospital records including all test results and lab data" and the "outcome of criminal charges presented against" the claimant.

A second, identical request was submitted to Applicant on February 19, 2015.

Respondent denied the claim on July 14, 2015.

11 NYCRR 65-3.4 provides in pertinent part:

> (o) An applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. The insurer shall advise the applicant in the verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. This subdivision shall not apply to a prescribed form (NF-Form) as set forth in Appendix 13 of this Title, medical examination request, or examination under oath request. This subdivision shall apply, with respect to claims for medical services, to any treatment or service rendered on or after April 1, 2013 and with respect to claims for lost earnings and reasonable and necessary expenses, to any accident occurring on or after April 1, 2013.

Information sought as additional verification is not necessarily that which can be found on the prescribed verification forms "but any information that the carrier finds necessary to properly review and process the claim." Westchester Medical Center v. Travelers

Property & Casualty Ins. Co., 2001 N.Y. Slip Op. 50082(U) at 3, 2001 WL 1682931 (Sup. Ct. Nassau Co., Ralph P. Franco, J., Oct. 10, 2001).

A request for verification should only be made where "there are good reasons to do so" and must be made within 15 business days of receipt of the claim. *See*, 11 NYCRR § 65-3.2(c), 65-3.5(b).

I find that "good reasons" for Respondent's verification request are lacking in the present circumstances, as the outcome of criminal charges has no effect on whether emergency services should be reimbursed. Section 5103(b)(2) of the Insurance Law states that:

> An insurer may exclude from coverage required 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 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 ten of section two thousand eight hundred one of the public health law, including ambulance services attendant thereto and related medical screening. Notwithstanding any other law, where the covered person is found to have violated section eleven hundred ninety two of the vehicle and traffic law, the insurer has a cause of action for the amount of first party benefits paid or payable on behalf of such covered person against such covered person. (Emphasis added).

As the services provided in the instant case were "necessary emergency services rendered in a general hospital", the insurer cannot exclude Assignor from coverage. Respondent did not contend that the criminal charges related to anything other than intoxication. Therefore, Respondent's pend of the claim for suspected intoxication was improper in this case.

Based on the foregoing, I am constrained to find that Applicant is entitled to reimbursement.

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	Amount	Status
Erie County Medical Center	**12/07/14 - 12/17/14**	**$29,793.28**	**Awarded: $14,919.13**
Total		**$29,793.28**	**Awarded: $14,919.13**

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 12/03/2015, which 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." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's in accordance with 11 NYCRR 65-4.6(e). 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 Erie

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

03/08/2017
(Dated)

Mona Bargnesi

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:
b04eb0f406d34f16baf8d437ce52b761

Electronically Signed

Your name: Mona Bargnesi
Signed on: 03/08/2017