American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lutheran Medical Center (Applicant)	AAA Case No.	17-16-1034-1764
	Applicant's File No.	98-1522202629
- and -	Insurer's Claim File No.	662004-02
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Andrew Horn, 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, eligible injured person, EIP.

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

   Patricia Hecht, Esq., of counsel, from William A. Hecht, PC, participated in person for the Applicant

   Don Rem, claims representative, from American Transit Insurance Company, participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,265.46**, 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

   Whether the insurance carrier was entitled to deny the claim based upon noncompliance with the Mandatory Personal Injury Protection Endorsement, which mandates that health service benefits must be submitted no later than 45 days after the services are provided?

4. Findings, Conclusions, and Basis Therefor

In dispute is Applicant Lutheran Medical Center's claim as the assignee of a 46-year-old man injured as a bicyclist struck by a motor vehicle on August 10, 2015, for reimbursement for emergency room services rendered on the date of the accident.

Respondent American Transit Insurance Company timely denied the claim because the provider submitted written notice of claim beyond the 45 day deadline set forth in the Regulations. (According to the denial of claim form, the claim was not received until October 7, 2015, fifty eight (58) days after the disputed services were rendered).

Although Respondent also preserved a fee schedule defense by checking off Box 18 on the NF-10 denial of claim form, see ARCO Medical NY, P.C. v. Lancer Ins. Co., 37 Misc.3d 136(A), 2012 N.Y. Slip Op. 52178 (App Term 2d, 11th & 13th Dists. Nov. 26, 2012), the insurer's attorney in her position statement acknowledged that fee schedule excessiveness was not an issue.

###

Under the current No-Fault Regulations, the Mandatory Personal Injury Protection Endorsement, effective for all policies renewed or issued on or after April 5, 2002, requires that written proof of claim must be submitted as soon as reasonably practicable, but in the case of health service expenses no later than 45 days after the date the services were rendered.

Although Applicant concedes that the claim was not sent to Respondent within the 45-day window, untimely submission, in and of itself, does not necessarily entitle MVAIC to refuse to pay the claim. See Lenox Hill Radiology v. Great N. Ins. Co., 2016 NY Slip Op 50206(U) (App Term 9th & 10th Jud Dists., Feb. 22, 2016).

"When an insurer denies a claim based upon the failure to provide timely written notice of claim or timely submission of proof of claim by the applicant, such denial must advise the applicant that late notice will be excused where the applicant can provide reasonable justification of the failure to give timely notice". 11 NYCRR § 65-3.3 (3).

In order to establish a late notice defense, Respondent must necessarily prove that its denial of claim forms "contained the required advisement" that late notice "will be excused where the applicant can provide reasonable justification of the failure to give timely notice". See SZ Med. P.C. v. Country-Wide Ins. Co., 12 Misc.3d 52, 2006 NY Slip Op 26194 (App Term 2d & 11th Jud. Dists., May 17, 2006). See also Park v. Zurich American Ins. Co., 33 Misc.3d 127(A), 2011 NY Slip Op 51835(U) (App Term 2d, 11th & 13th Jud. Dists. Oct. 11, 2011); Delta Diagnostic Radiology, P.C. v. Interboro Ins. Co. , 25 Misc.3d 134(A), 2009 NY Slip Op 52222(U) (App Term 2d, 11th & 13th Jud. Dists., Oct. 23, 2009); Radiology Today P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111(App. Term 2d Dept., March 8, 2007).

Given that the relevant denial form communicated, as required by the No-Fault Regulations, that late submission of the proof of claim will be excused where an applicant can provide a reasonable justification for the late submission, Respondent is not precluded from defending its denial on this basis. Id.

"(L)ate notice will be excused where the applicant can provide reasonable justification of the failure to give timely notice." 11 NYCRR § 65-3.3 (3).

It is incumbent upon the claimant to provide the insurer with a written justification for the untimely submission in order for it to be excused. Americhoice Med., P.C. v. MVAIC, 41 Misc.3d 130(A), 2013 NY Slip Op 51742(U) (App Term 2d Dept., Oct. 10, 2013); Five Boro Psych. Svcs., P.C. v. MVAIC, 36 Misc.3d 149(A), 2012 NY Slip Op 51656(U)(App Term 2d Dept., Aug. 24, 2012); AAA Chiropractic, P.C. and MVAIC, 29 Misc.3d 131(A), 2010 NY Slip Op 51896(U) (App Term 2d, 11 & 13 Jud. Dists.,Nov. 8, 2010); AR Med. Rehabilitation, P.C. v. MVAIC, 27 Misc.3d 135(A), NY Slip Op 52124(U) (App Term 2d, 11 & 13 Jud. Dists., May 10, 2010).

On November 10, 2015, after receipt of the denial, one of the hospital's claims representatives wrote to Respondent and informed it that assignor "did not provide the facility with the correct insurance information upon admission." She (erroneously) stated that "No Fault was provided by the patient on 9/24/15," when, according to the computerized notes and the affidavit of May Lew, No-Fault/Workers' Compensation Manager at RTR Financial Services, Inc., "on September 1, 2015, RTR sent the patient a letter requesting his insurance information," on September 30, 2015 received the No-Fault insurance information "by mail," and the bill was submitted six days thereafter, on October 6, 2015.

After Applicant provided Respondent with its written justification for the untimely submission, see Americhoice Med., P.C. v. MVAIC, 41 Misc.3d 130(A), 2013 NY Slip Op 51742(U) (App Term 2d Dept., Oct. 10, 2013); Five Boro Psych. Svcs., P.C. v. MVAIC, 36 Misc.3d 149(A), 2012 NY Slip Op 51656(U)(App Term 2d Dept., Aug. 24, 2012); AAA Chiropractic, P.C. and MVAIC, 29 Misc.3d 131(A), 2010 NY Slip Op 51896(U) (App Term 2d, 11th & 13th Jud. Dists., Nov. 8, 2010); AR Med. Rehabilitation, P.C. v. MVAIC, 27 Misc.3d 135(A), NY Slip Op 52124(U) (App Term 2d, 11th & 13th Jud. Dists., May 10, 2010), Respondent gave consideration to the explanation, see Matter of Medical Socy. of the State of New York v. Serio, 100 N.Y.2d 854, 863 (2003); Bronx Expert Radiology v. Clarendon Natl. Ins. Co., 2009 NY Slip Op 50747(U), 23 Misc.3d 133(A) (App Term 1st Dept., April 20, 2009), but stood by its denial.

In its position statement, Respondent suggested that "Applicant failed to perform its due diligence in finding the correct no-fault information when the claimant was admitted to its facility" since it "could have found no-fault information on the Police Accident Report."

The insurer also contended that "Applicant had the correct no-fault insurance information" prior to September 30, 2015 since "it faxed Respondent the Application for No-Fault Benefits on 09/08/2015."

Applicant's attorney disputed that the hospital faxed the NF-2 and there is no proof in the record to support the insurer's contention. I also find Respondent's attorney's contention that "Applicant's attorney conceded that she had the correct no-fault information on 09/08/2015" completely unfounded and without a basis in the record.

After careful consideration of both parties' evidence and arguments, I find that the 12-day delay in submitting the claim was excusable because of the hospital's difficulty in ascertaining the identity of the appropriate insurer. See Bronx Expert Radiology, P.C. v. Great N. Ins. Co., 24 Misc.3d 134(A), 2009 NY Slip Op 51474(U) (App Term 1st Dept. 2009); Bronx Expert Radiology, P.C. v. Motor Veh. Acc. Indem. Corp., 20 Misc.3d 140(A), 2008 NY Slip Op 51612(U) (App Term 1st Dept. 2008); NY Arthroscopy & Sports Medicine PLLC v. Motor Veh. Acc. Indem. Corp., 15 Misc.3d 89, 2007 NY Slip Op 27174 (App Term 1st Dept. 2007).

As the New York State Department of Financial Services advised in a circular letter dated February 3, 2015, it is "challenging" for hospitals, which, by law, must treat all injured persons regardless of whether they have insurance or complete the requisite forms, to ensure that an eligible injured person expeditiously identifies the appropriate insurance carrier.

Accordingly, Respondent's denial predicated upon the 45 day rule is vacated and Applicant's claim is granted in its entirety.

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

Medical	From/To	Claim Amount	Status
Lutheran Medical Center	**08/10/15 - 08/10/15**	**$2,265.46**	**Awarded: $2,265.46**
Total		**$2,265.46**	**Awarded: $2,265.46**

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 05/04/2016, which is a relevant date only to the extent set forth below.)

The insurer shall pay interest on the claim from May 4, 2016 until such time as payment is made.

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 fee, subject to a maximum fee of $1,360.00, in accordance with 11 NYCRR 65-4.6(d).

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 Bronx

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

03/30/2017
(Dated)

Andrew Horn

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:
5b538d6a091cf3d0696098e1252a8ced

Electronically Signed

Your name: Andrew Horn
Signed on: 03/30/2017