

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Surgicare of Brooklyn LLC fka New York
Center for Specialty Surgery
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No.	17-16-1042-7006
Applicant's File No.	NYS213.10/213.12
Insurer's Claim File No.	54808
NAIC No.	24309

ARBITRATION AWARD

I, Karen Fisher-Isaacs, 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 03/27/2018
Declared closed by the arbitrator on 03/27/2018

Michael Lamond from Akiva Ofshtein PC participated in person for the Applicant

Michael Poropat from Law Offices of Rubin & Nazarian participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,944.10**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant, by counsel, amended the amount of the claim to \$2,574.20. The parties stipulated that Applicant's billing in the amount of \$1,807.95 was correct and Applicant reduced the amount he was seeking for the co-surgeon from \$1136.15 to \$766.25. Respondent withdrew its fee schedule defense.

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

3. Summary of Issues in Dispute

In dispute is Applicant's billing for its facility fee and co surgeon's fee associated with MUA performed on December 6, 2015 for Assignor, an 18-year old male, in connection with treating injuries allegedly sustained in a May 1, 2015 motor vehicle accident.
Whether Applicant's claim is ripe for arbitration.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the American Arbitration Association's ADR Center as of the date of the hearing in this matter and have considered all pertinent documents contained therein for the purpose of rendering this award.

Applicant seeks reimbursement in the amended amount of \$2,574.20, it billing for the facility fee (\$1,807.95) and for the co-surgeon associated with MUA performed on December 6, 2015 for Assignor, an 18-year old male, in connection with treating injuries allegedly sustained in a motor vehicle accident on May 1, 2015. Respondent has neither paid nor denied Applicant's claim asserting that its not ripe for arbitration due to outstanding verification.

I find that Applicant has established its prima facie case as Applicant has met the requirements enunciated in *Ave T MPC Corp. v Auto One Ins. Co.*, 32 Misc 3d 128[A], 2011 NY Slip Op 51292[U] [App Term, 2d, 11th & 13th Jud Dists 2011]). The Court held that "A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission to the defendant of a claim form, proof of the fact and the amount of the loss sustained, and proof that the defendant either failed to pay or deny the claim within the requisite 30-day period, or issued a timely denial of claim that was conclusory, vague or without merit as a matter of law (see Insurance Law § 5106 [a]; *Westchester Med. Ctr. v Nationwide Mut. Ins. Co.*, 78 AD3d 1168 [2010]; see also *New York & Presbyt Hosp v. Allstate* 31 AD3d 512 [2006])."

Assignor was a front-seated passenger in a motor vehicle that was involved in an accident on May 1, 2015. He underwent MUA on December 6, 2015. Respondent's evidence established that upon receipt of Applicant's billing for the facility and co-surgeon on January 22, 2016, it sent verification request dated February 16 and March 22, 2016. Respondent was seeking:

- the complete anesthesia record,
- the surgeons' addresses and narrative reports,
- the referring doctor's report.
- LMN,
- pre-nursing record,

- recovery room record,
- surgical and discharge checklist,
- MRI films of the left shoulder, right hip, left hip and pelvis and
- documentation for fee code 27194

At the hearing in this matter, the parties agreed that by letters dated March 28 and March 31, 2016, Applicant substantially complied with all of Respondent's requests but for the actual MRI films of Assignor's left shoulder, right/left hip and pelvis but that Applicant did supply the MRI results.

While it is also undisputed that Respondent cc'd Columbus Imaging Center, LLC, the facility that performed the MRIs, Respondent did not submit any evidence that it attempted to contact Columbus Imaging Center directly or what efforts it made to secure said films after May 5, 2016.

"New York's arbitration process for no-fault coverage is an expedited, simplified affair meant to work as quickly and efficiently as possible". Allstate Insurance Co. v. M.D. David Mun, 13-1424-cv, NYLF, 1202654312154, at *1 (2d. Cir., May 6, 2014). Delaying a claim for almost two years after Applicant substantially responded and offered everything within its control is counter to the No-Fault regulations.

Inasmuch as Applicant substantially complied with Respondent's requests and sent Respondent everything that was within its control, I find that Respondent cannot further pend this bill waiting for the actual MRI films that Applicant represents it does not possess especially when Respondent has not attempted to secure them on its own in almost two years.

I find that the insurer had thirty (30) days after receipt of Applicant's verification response on March 31, 2016 to pay or deny Applicant's claim and because Respondent failed to pay or deny Applicant within the statutory period, the claim for payment is now overdue.

Where an insurer does not timely and properly deny a claim, an applicant is not required to establish the merits of its claim as an element of its prima facie burden. Vivian Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 2013 NY Slip Op 08430 (App Div 2d Dept., Dec. 18, 2013), affd. 25 N.Y.3d 498 (2015).

Accordingly, Applicant is awarded \$2,574.20, the entirety of its amended claim.

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	Amount Amended	Status
	New York Center for Specialty Surgery	12/06/15 - 12/06/15	\$2,944.10	\$2,574.20	Awarded: \$2,574.20
Total			\$2,944.10		Awarded: \$2,574.20

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 08/25/2016, which is a relevant date only to the extent set forth below.)

Interest to run from May 1, 2016.

C. Attorney's Fees

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

20% of the amount awarded.

- 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 Kings

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

03/28/2018
(Dated)

Karen Fisher-Isaacs

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:
2b5c2061a2ae842729ec1a109b5cb3aa

Electronically Signed

Your name: Karen Fisher-Isaacs
Signed on: 03/28/2018