American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Huntington Hospital (NSUH) (Applicant)	AAA Case No.	17-17-1069-2849
	Applicant's File No.	RFA17-199710
- and -	Insurer's Claim File No.	32-7D99-095
	NAIC No.	25178
State Farm Mutual Automobile Insurance Company (Respondent)		

ARBITRATION AWARD

I, Laura Yantsos, 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

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

   David Tetlak, Esq., from Picciano & Scahill, P.C. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 59,187.28**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant reduces its claim to $23,221.68 to comply with the governing fee schedule

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

3. Summary of Issues in Dispute

   Is the Respondent exempt from issuing a timely denial on a defense that the assignor's need for a knee replacement did not arise out of the motor vehicle accident?

4. Findings, Conclusions, and Basis Therefor

The claim is for hospital facilities charges for total knee replacement. The admission to the hospital was between 3/16/17 and 3/20/17. The total amount of the claim I sin the sum of $23,221.68.

The Respondent denied the claim on the recommendations of its doctor who conducted a peer review and an IME of the assignor and found that the assignor's knee condition had resolved, and that his need for surgery did not arise from the motor vehicle accident of 9/19/15.

The Applicant moves to preclude the Respondent from offering its peer review and IME defense on the grounds that the denial is untimely, i.e. was issued more than 30 days after the date the claim was received.

Respondent contends that the Applicant did not furnish proof of claim in that a UB-4 claim form was submitted, rather than the required no-fault form, i.e. a NF-5, as the court found in *Sound Shore Med Ctr. V. New York Cent. Mut. Fire Ins. Co., 2013 NY Slip Op 02390 (106 A.D.3d 157)*

The Respondent further contends that a timely denial is not required when the defense concerns coverage - that there is no coverage upon thegrounds that the hospital services for a total knee replacement did not arise from the motor vehicle accident.

Sound Shore Defense

I find that Applicant submitted proof of claim on the grounds that the claim form used by the hospital is substantially equivalent to the NF-4 form. The court's holding in Sound Shore concerns whether written notice of claim was given on a UB-4 form, (i.e. the substantial equivalent of an NF-5 form) and found that it was not. The NF-5 form is a combination of both written notice of claim and verification of treatment by the hospital. In the instant claim, the Respondent had already received written notice of claim from the assignor, and therefore, an NF-5 form was not required. The court's holding in Sound Shore, supra is not relevant to this claim. I find that the hospital form used is the substantial equivalent to the NF-4 form (i.e. verification of treatment by the hospital). See AAA Case No. 17-15-1006-8939

Causation Defense

The Respondent contends also that they are not required to issue a denial within 30 days as the defense is one of coverage and may be raised at any time. Specifically, the grounds for denial on the NF-10 form state that the "services.....are not related to this motor vehicle accident".

The service in question is a total knee replacement.The Respondent is not contending that the assignor did not sustain a knee injury in the accident. Respondent is contending

that the knee injury sustaned in the accident had earlier resolved based upon the Respondent's IME, and that any need for surgery was the result of a pre-existing condition, a condition that existed before the accident happened. Thisdefense is fundamented upon the IME earlier performed by the Respondent's doctor, as well as a later peer review of the same doctor.

The court in *Mount Sinai Hospital v. Triboro Coach, 263 A.D. 2d 11, 699 N.Y.S. 2d 77, 19999 N.Y. Slip Op 10040 (1999)* found that the coverage exemption from preclusion found by the court in Central Gen. Hosp. v. Chubb Group of Ins. Cos., 90 N.Y.S2d 195, 199 that would allow Respondent to raise its defense of noncoverage notwithstanding its failure to disclaim within the 30 days statute period, must be premised on "the fact" that the alleged condition *was not related to the accident at all*, and does not extend to an aggravation or pre-existing injury. *See also Westchester Medical Center a/a/o John Roe v. Travelers Property Casualty Company of America, 44 Misc. 3d 1221(A), 3 N.Y.S. 3d 287 (Table), 2014 WL 3929148, 2014 N.Y. Slip Op 51216(U)*

I find that the instant case falls squarely within that definition, as the Respondent does not claim the assignor did not injure his knee. The Respondent claims that according to its IME, the assignor's knee injury sustained in the accident had resolved, and according to the doctor's later peer review report, the accident-related knee injury resolved, and any need for surgery did not arise from the accident, but arose from a pre-existing condition.

I find that the Respondent is not entitled to the exemption under Chubb, supra and Respondent was bound to issue a timely denial of the claim or suffer preclusion.

Respondent is precluded from offering its submissions on this claim on the grounds that the denial is untimely.

Applicant is awarded $23,221.68 with interest from the date of filing, plus attorney's fees and filing fee as hereinbelow set forth.

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**
	Huntington Hospital (NSUH)	**03/16/17 - 03/20/17**	**$59,187.28**	**$23,221.68**	**Awarded: $23,221.68**
Total			**$59,187.28**		**Awarded: $23,221.68**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/17/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall pay interest on the total award in the sum of two percent, per month, simple interest, calculated from the date of filing, which I find to be when the AAA accept the Applicant's AR-1 application for filing, and ending on the date when payment is made. 11 NYCRR 65-3.9

C. Attorney's Fees

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

The Respondent shall also pay the applicant attorney's fees on the total award in accordance with 11 NYCRR 65-3.10 and subject to the limitations of 11 NYCRR 65-4.6.

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

04/22/2018
(Dated)

Laura Yantsos

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:
d41e8ae412888b2bc13e2588eeb92b53

Electronically Signed

Your name: Laura Yantsos
Signed on: 04/22/2018