

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hyun J. Kim Physical Therapy, PC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-17-1063-0236

Applicant's File No. N/A

Insurer's Claim File No. 503003

NAIC No. Self-Insured

ARBITRATION AWARD

I, Corinne Pascariu, 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 05/17/2018
Declared closed by the arbitrator on 05/17/2018

Kristen Cahill, Esq. from Zelli & Cahill, P.C. participated by telephone for the
Applicant

Barbara Carabella, Esq. from Marshall & Marshall, Esqs. participated in person for the
Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,123.67**, 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

Assignor is a male who was 18-years-old when he was injured as the result of a motor vehicle accident on October 9, 2013. On October 28, 2013 he underwent an EMG/NCV. Respondent denied reimbursement on the ground that the bill was submitted more than 45 days after the testing was performed and, accordingly, it was untimely. Respondent now contends that the claim must be dismissed because the statute of limitation has run.

Issue

Whether Respondent can establish that the statute of limitation had run by the time Applicant filed the case. If not, the issue is whether Applicant can establish that it submitted the claim within 45 days.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center maintained by the American Arbitration Association as of the date of this award and considered the oral arguments of the parties' representatives. There were no witnesses.

Three Year Statute of Limitations

As a preliminary matter, Respondent's attorney argued that Applicant's claims must be dismissed as time-barred by the three-year statute of limitations because its AR-1 was filed after the three-year statute of limitations that applies to MVAIC expired. I agree.

An insurer moving for dismissal of a claim on statute of limitations grounds bears the initial burden of establishing prima facie that the time in which to sue has expired. *Shirom Acupuncture, P.C. v. New York City Office of the Comptroller*, 47 Misc.3d 150(A), 17 N.Y.S.3d 385 (Table), 2015 N.Y. Slip Op. 50779(U), 2015 WL 3369474 (App. Term 2d, 11th & 13th Dists. May 18, 2015).

Respondent's attorney argued that MVAIC is self-insured and that MVAIC's liability in No-fault matters "would not exist but for statute." *Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 175 (1986). Therefore, CPLR 214 (2) applies because "it is an action to recover upon a liability created or imposed by statute." CPLR 214 (2) references a three-year statute of limitations.

In *Matter of Motor Vehicle Accident Indemnification Corporation v. Aetna Casualty & Surety Company*, 89 N.Y.2d 214 (1996), the Court of Appeals established that a three-year statute of limitations governs claims filed against MVAIC. Specifically, because MVAIC's obligation to pay claims is statutory and not contractual, the statute of limitations for commencing an action to recover first party benefits is three years from the date the cause of action accrues. See also, *Downtown Integrated Medical Services, P.C. v. MVAIC*, 29 Misc.3d 129(A), 2010 N.Y. Slip Op. 51778(U), (App. Term 1st Dept. Oct. 15, 2010); *Shtarkman v. MVAIC*, 20 Misc.3d 132(A), 2008 N.Y. Slip Op. 51447(U), (App. Term 2d & 11th Dists. July 8, 2008). Therefore, Applicant had three years from date of Respondent's denials to commence the instant arbitration.

The three-year statute of limitations is triggered once the 30-day period for paying or denying a claim expires, in a case where there is an untimely denial of claim. See, *In Line Chiropractic, PC v. Motor Vehicle Accident Indemnification Corporation*, 6 Misc.3d 1032(A), 800 N.Y.S.2d 347, 2005 N.Y. Slip Op. 50275(U), 2005 WL 524804 (Civ.

Ct. Bronx Co., 2005). Here, Respondent received Applicant's claim on February 26, 2014 and denied it on March 24, 2017. Applicant filed this claim on May 8, 2017, more than three years later. Therefore, I find that the claim is time barred by the three-year statute of limitation. Accordingly, I dismiss this 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 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, Corinne Pascariu, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

05/18/2018
(Dated)

Corinne Pascariu

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:
8671adfc608d754ea84ef9d7923edc

Electronically Signed

Your name: Corinne Pascariu
Signed on: 05/18/2018