American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NYEEQASC, LLC (Applicant)	AAA Case No.	17-17-1067-8018
	Applicant's File No.	201703020940342
- and -	Insurer's Claim File No.	66547602
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Elyse Balzer, 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: CS

1. Hearing(s) held on 09/21/2018
   Declared closed by the arbitrator on 09/21/2018

   A. Domashitsky, Esq from Subin Associates LLP participated in person for the Applicant

   Justin Rothman, Esq. from American Transit Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,633.70**, 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

   This arbitration arises out of a claim for facility fees for epidural steroid injections (ESIs) with fluoroscopy performed on 8/25/16 on the 57 year old male injured person CS for injuries sustained as a driver in an accident on 2/12/16.

   The issue is whether this arbitration is premature due to outstanding verification for information about the eligible injured person's eligibility for benefits from the Livery Fund.

   At the hearing respondent acknowledged that there was no issue regarding the exhaustion of the applicable policy.

All the documents maintained in the electronic case folder of the AAA, on the Modria website, for this case were reviewed.

4. Findings, Conclusions, and Basis Therefor

Respondent argues that this claim is premature and must be dismissed without prejudice due to the lack of verification about the eligible injured person's eligibility for benefits from the Livery Fund.

Respondent presented verification requests to applicant, dated 9/30/16 & 11/4/16, which sought this information.

These requests also sought other information (letter of medical necessity for injections; medical records, reports & referrals for treatment at applicant's facility) from applicant.

Respondent also sent delay letters, dated 11/6/16 & 12/8/16, to applicant which stated:

> The entire claim is pending receipt of the following which was requested from the claimant. We are in receipt of your claim for benefits, be advised this claim maybe subject to the Independent Livery fund in order to obtain this coverage please provide relevant information regarding your eligibility for such coverage. Forward the name of the Car Service or Base from which the call was dispatched, proof the vehicle involved in the accident of record and the Base have paid into the fund. Please note if the claim is provided for under the Independent Livery Fund which allows for No-Fault benefits, the claim will be subject to Workers' Compensation rules and regulations regarding loss of income and regarding but not limited to loss of income , pre-authorization of medical treatment and procedures. If you continue to work during the period of treatment you must state the date you started to work.
>
> Please be advised that this information is needed to further verify eligibility for No-Fault benefits. Please be advised the following was also requested from the claimant.

Respondent also showed that it requested the information regarding eligibility for the Livery Fund directly from CS. Respondent presented verification requests to CS dated 3/21/16, 4/25/16 & 6/15/16 for this information.

Respondent argued that two of my esteemed colleagues, Arbitrators Glynn & Rosenberg, had already decided this issue, involving services to CS by other providers.

Arbitrator Glynn, in David T. Neuman, MD & American Transit, AAA Case No. 17-17-1055-2770, (award 10/2/17) wrote:

> Applicant's counsel argues that Applicant was not required to respond to the 12/29/16 request because Respondent never provided any proof that the Assignor was in the course of his employment. Respondent argues correctly, in response, that Respondent was entitled to this verification of the claim and that it had established that it had properly sought that verification from the Applicant and the Assignor. I agree that Respondent was entitled to this verification. Furthermore, there is ample case law which provides that neither party may ignore communications from the other without risking its chance to prevail in the matter. Media Neurology, P.C. v. Country Wide Ins. Co., 21 Misc 3d 1101; Westchester County Medical Center v. N.Y. Central Mutual Fire Ins. Co., 262 A.D. 2d 553. Any questions concerning a communication should be addressed by further communication, not inaction. Dilon Medical Supply Corp. v. Travelers Ins. Co., 7 Misc.3d 927, 796 N.Y.S.2d 872 (Civ. Ct. Kings Co. 2005, Canarsie Chiropractic, P.C. v. State Farm Mut. Auto. Ins. Co., 27 Misc.3d 1228(A) (2010).

Arbitrator Rosenberger, in Stand Up MRI of Queens & American Transit, AAA Case No. 17-17-1064-5699, (award 3/20/18) wrote:

> In the instant case respondent issued timely and proper verification requests. Applicant responded, in part, and then respondent issued another request noting what was incomplete while recognizing what was received. Applicant failed to establish that it fully complied with the request by failing to provide the information as to the Livery Fund. In light of the foregoing, the claim is premature. Therefore, the claim is dismissed without prejudice.

Respondent presented the affidavit, sworn to on 8/21/17, of Cheryl Glaze, a no fault claims representative in respondent's employ. Ms. Glaze reviewed the no fault file for CS. Ms. Glaze attested to respondent's business practices for creating & issuing NF 10s (denials) and verification requests.

Ms. Glaze attested that the above verification requests had been mailed to the addressees, to applicant's replies, the police report which indicated that CS might be eligible for no fault benefits from the Independent Livery Fund, to respondent's responses to applicant's replies, and to the repeated requests sent to CS for information about his eligibility for benefits from the Independent Livery Fund. Ms. Glaze attested that the verification was outstanding.

Respondent submitted the affidavit, sworn to on 8/21/17, of Luis Campbell, respondent's mail room supervisor, to prove the mailing of the verification requests to applicant and to CS.

Applicant argues that replied to respondent's verification requests and that the last reply was 1/3/17 for which there was no response from respondent. Applicant argues that it should prevail due to respondent's failure to respond to this reply.

In this case the issue is not just whether verification is outstanding, but whether coverage exists. There is an issue of whether the primary coverage for no fault benefits for CS for the accident of 2/12/16 exists with the Independent Livery Fund.

It is clear that respondent has not received any information from applicant about this possible coverage. Applicant rightly argues that it does not have such information.

However, respondent has proven that it asked for this coverage information from CS and that CS has not provided such information. Respondent is, therefore, unable to determine if CS is eligible for Independent Livery Fund benefits, or whether respondent must provide primary coverage for no-fault benefits.

Under New York law, an assignee is subject to all claims and defenses that would be available against the assignor. Dartmouth Plan, Inc. v. Valle, 117 Misc. 2d 534, 458 N.Y.S. 2d 848 (Sup. Ct. Kings 1983).

In West Tremont Medical Diagnostic PC v GEICO, 13 Misc.3d 131A, 824 N.Y.S.2d 759, 2006 NY Slip Op 51871U, the Appellate Term of the Second Department stated that "…. it is well settled that the assignee stands in no better position than its assignor, and has no more right or claim than the assignor (see Matter of International Ribbon Mills [Arjan Ribbons], 36 N.Y.2d 121, 325 N.E.2d 137, 365 N.Y.S.2d 808 [1975])."

The Civil Court, Queens County, Judge Bernice Siegal, has also acknowledged the above principle in CPT Medical Service PC v. Utica Mutual Ins., 811 N.Y.S.2d 909, 2006 NY Slip Op 26098 (2006)("….this court is also cognizant of the long-established principle, asserted by defendant herein, that an " assignee stands in the shoes of the assignor and takes the assignment subject to any preexisting liabilities" (Arena Construction Company, Inc. v. J. Sackaris & Sons, Inc., 282 AD 2nd 489, 722 N.Y.S.2d 884 [2nd Dept. 2001]). That general principle remains alive and well today in No-Fault actions, albeit modified and refined by the limited nature of no-fault claims assignments and by operation of New York State's Insurance Law and no-fault regulations promulgated thereunder. (SeeA & S Medical P.C. v. Allstate, 196 Misc. 2d 322, 764 N.Y.S.2d 767 [App Term, 1st Dept. 2004] aff'd 15 A.D.3d 170, 789 N.Y.S.2d 27 [1st Dept 2005]).")

It is commonly held that, in no fault claims, a health care provider as assignee of the insured "stands in the shoes of the insured."

In this case, CS had not responded to respondent's relevant & material verification requests and has not established entitlement to coverage. Hence applicant, as CS' assignee, cannot claim coverage from respondent at this point in time.

Based on my review of the evidence, I find that this claim is premature due to outstanding verification on the issue of coverage and dismiss it, without prejudice.

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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York
SS :
County of Westchester

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

10/31/2018
(Dated)

Elyse Balzer

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:
9669abc86720b71bcf112cbe9a2a4373

Electronically Signed

Your name: Elyse Balzer
Signed on: 10/31/2018