

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NS Radiology PLLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-17-1072-2547

Applicant's File No. none

Insurer's Claim File No. B609126

NAIC No. 16616

ARBITRATION AWARD

I, Tracy Morgan, 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: injured person-assignor

1. Hearing(s) held on 03/20/2019
Declared closed by the arbitrator on 03/20/2019

Elvira Messina, Esq. from Costella & Gordon LLP participated in person for the
Applicant

Taylor Grogan, Esq. from Daniel J. Tucker, P.C. participated in person for the
Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,670.40**, 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

The Applicant is the assignee of no-fault benefits from injured person-assignor (MF), a 34 year old female passenger who was involved in a motor vehicle accident on September 25, 2016. Following the accident, the injured person-assignor sought medical treatment and underwent cervical, lumbar and left knee MRIs October 10, 2016 - November 13, 2016 performed by Applicant. Respondent denied Applicant's claims based upon late submission; that they were submitted more than 45 days after the date of service.

The issue presented on this arbitration is whether Applicant demonstrated reasonable justification for its late proofs of claim?

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in ADR Center. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed the relevant exhibits contained in the electronic file maintained by the American Arbitration Association and have considered all of the stipulations and arguments presented by both parties at the hearing of this matter. No witnesses appeared or testified.

11 NYCRR 65 - 1.1 provides in pertinent part: proof of claim, medical, work loss and other necessary expenses. In the case of a claim for health service expense, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practical but, in no event later than 45 days after the date services are rendered.

Pursuant to both the Insurance Law and the Regulations promulgated by the Superintendent of Insurance, an insurer must either pay or deny a claim for no-fault benefits within 30 days from the date an applicant supplies proof of claim *See, Insurance Law §5106[a]; 11 NYCRR 65.15[g]; Presbyterian Hosp.in City of N.Y. v Maryland Cas. Co.*, 90 NY2d 274, 278 (1997).

11 NYCRR 65 - 3.3 (e) provides, that when an insurer denies a claim based upon the failure to provide timely submission of proof of claim, 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.

Herein, Respondent received Applicant's proofs of claim on February 3, 2017 and timely denied them on the ground that proof of claim was not submitted within the prescribed 45 day limit. I find that Respondent's denial contains the requisite language that the late submission of the claims will be excused if the claimant provides a reasonable justification for the failure to timely submit the claims.

Applicant's claims are for services rendered October 10, 2016 - November 13, 2016. Respondent submitted the Affidavit of Cheryl Glaze indicating that Applicant's proof of claim was received on February 3, 2017. Thus, it is clear that written proof of claim was submitted to Respondent more than 45 days from the date the services were rendered. Respondent submitted a letter of representation from the injured person-assignor's attorneys directed to Respondent dated September 27, 2016. Included with the letter of representation was the Police Accident Report and the injured person-assignor's NF-2 both of which indicated that she was a passenger in a cab. The Police Accident Report included Respondent's insurance code. Respondent also submitted correspondence from MVAIC dated November 21, 2016 directed to Applicant and advising Applicant that there is coverage available through American Transit and the policy number was

provided. A second correspondence dated January 11, 2017 identical to the first was sent by MVAIC to Applicant.

Cheryl Glaze in her affidavit attested to the standard business practice of the Respondent relating to the receipt and processing of NY PIP mail. Ms. Glaze stated that Applicant's proofs of claims were received on February 3, 2017. She stated that the claims were denied since they were submitted more than 45 days from the date of service. She learned from Applicant that Applicant originally mailed the bills to MVAIC since American Transit was not identified as the insurance carrier. She noted that the injured person-assignor and her attorneys were aware that Respondent was the correct carrier since the date of the letter of representation, September 27, 2016 and further that MVAIC's correspondence from November 2016 advised that there was coverage through Respondent. Yet Applicant waited more than 2 months to mail the bill to Respondent. Moreover, that the police accident report lists Respondent as the carrier of the host vehicle.

No further correspondence or proof was submitted to explain why the original proof of claim was submitted to MVAIC. I note that the Police Accident Report clearly lists Respondent as the insurance carrier of the host vehicle and consistent with Ms. Glaze's statements, the injured person-assignor's attorneys contacted Respondent as early as September 27, 2016, 2 days after the accident, to present her NF-2. No proof was submitted to explain why, after receiving MVAIC's denials advising Applicant to seek benefits through Respondent, Applicant did not submit its proof of claim to Respondent for more than 2 months.

Applicant requested permission to withdraw the claim without prejudice to re-file with additional evidence. Per the notification by the American Arbitration Association, documents received after October 25, 2017 would be marked late. Such documents would then be received only at the sole discretion of the arbitrator. 11 N.Y.C.R.R. 65-4.2(b)(3)(4). No reasonable explanation was offered as to why additional time was needed. Accordingly, inasmuch as Applicant has not offered a sufficient reasonable excuse or explanation for the need for further time to submit evidence to support its contentions, Applicant's request is denied.

Applicant's proof is insufficient to trigger the carrier's obligation to consider whether Applicant has a reasonable explanation for the late submission. If a claimant's excuse for an untimely proof of claim is that it had been inadvertently submitted to a different carrier, such excuse cannot be excused if there is no proffer of an explanation as to why that occurred *See, Norman Schoenberg, M.D., P.C. v N.Y.C. Tr. Auth.*, 39 Misc3d 128(A) (App Term 2d, 11th & 13th Dists, March 15, 2013); *Prestige Med. & Surgical Supply, Inc. v Chubb Indem. Ins. Co.* 26 Misc3d 145(A) (App Term 2d, 11th & 13th Dists, March 10, 2010). Such an explanation or demonstration of reasonable justification would require substantive detail as to why the bill was initially submitted to the wrong carrier; how and when it was determined that this was in error; how and when updated insurance information was received and, finally, a demonstration that the claim was re-submitted to the Respondent expeditiously thereafter *See, Synergy First Medical, PLLC v MVAIC*, 44 Misc3d 127(A) (App. Term 2d, 11th & 13th Dists, May 29, 2014);

Norman Schoenberg v. NYC Transit Authority, 39 Misc. 3d 128 (A), 971 NYS 2d 74 (App. Term 2d, 11th & 13th Dists, March 15, 2013). I find that the Applicant has not satisfied its burden of proof.

Moreover, upon receipt of the Respondent's NF-10, Applicant was given the opportunity to present reasonable justification for the late submission. Applicant did not respond. I find that Applicant has failed to demonstrate reasonable justification for its late submissions to Respondent. As such, I find in favor of the Respondent and deny the Applicant's claims. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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

03/29/2019
(Dated)

Tracy Morgan

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:
6d5a4de570762e0080207d721008c247

Electronically Signed

Your name: Tracy Morgan
Signed on: 03/29/2019