

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-18-1084-7212

Applicant's File No. 2046524

Insurer's Claim File No. 67057503

NAIC No. 16616

ARBITRATION AWARD

I, Matthew J. Cavalier, 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 09/03/2019
Declared closed by the arbitrator on 09/03/2019

Scott Fisher, Esq from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

David Tetlak, Esq from American Transit Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, \$ **236.94**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to a prima facie case, the timeliness of the denials, that there were no fee schedule issues, and to the date upon which interest shall accrue.

3. Summary of Issues in Dispute

Whether the 52 year old male EIP, injured in an MVA on September 3, 2016, and received medical services on October 31, 2017, and were the services correctly billed and timely submitted by the Applicant, and

Whether the Respondent can also maintain its defense that the Assignor is not an Eligible Injured Party ("EIP") and thus not eligible for no fault benefits?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary.11 NYCRR 65-4.5(o)(1)(Regulation 68-D).

There is one bill for date of service October 31, 2017 with a disputed balance due of \$236.94 for the medical services rendered as per the Applicant's AR-1. The Applicant timely forwarded the bills to Respondent who denied the bill with the following defense "ENTIRE CLAIM IS DENIED AS CLAIMANT IS NOT LISTED ON THE POLICE REPORT AND MV104 AS BEING INVOLVED IN ACCIDENT OF RECORD", first in a general NF-10 dated September 28, 2016, and subsequently a specific denial.

Applicant establishes a prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received by Respondent and that payment of no-fault benefits were overdue." *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

The Respondent's attorney argued that the Assignor was not named on either the initial police report or their driver's MV-104 form, therefore these documents prove that the Assignor is not an Eligible Injured Party (EIP).

Applicant's attorney argued that the Respondent failed to investigate this question of fact as to the identity of the Assignor and the circumstances surrounding the MVA by conducting and SIU investigation, conducting an EUO of their driver and the Assignor via a request for additional verification of claim. The Applicant submitted a sworn statement from the driver that describe the event of the MVA including striking a male pedestrian, thus confirming the information in the police report and the driver's previously submitted MV-104.

Upon the review of all the submitted evidence and the arguments of the parties, the Applicant has successfully rebutted the Respondent's defense alleging the Assignor is not an EIP by a preponderance of the evidence, the Applicant prevails.

- #### 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	Total	Status
	New York Spine Specialists LLP	10/31/17 - 10/31/17	\$236.94	\$ 236.94	Awarded: \$236.94
Total			\$236.94	Awarded: \$236.94	

B. The insurer shall also compute and pay the applicant interest set forth below. 01/20/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date set forth above at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

The Applicant's attorney is entitled to one attorney fee in accordance with 11NYCRR 65-4.6(d).

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

09/25/2019
(Dated)

Matthew J. Cavalier

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:
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Electronically Signed

Your name: Matthew J. Cavalier
Signed on: 09/25/2019