

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Paramount Medical Services PC  
(Applicant)

- and -

Country-Wide Insurance Company  
(Respondent)

AAA Case No. 17-18-1103-3964

Applicant's File No. n/a

Insurer's Claim File No. 000332814 002

NAIC No. 10839

### ARBITRATION AWARD

I, Jennifer Zeidner, 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: Claimant.

1. Hearing(s) held on 01/29/2020  
Declared closed by the arbitrator on 01/29/2020

Lee-Ann Trupia, Esq. from The Law Offices of Hillary Blumenthal P.C. participated in person for the Applicant

Edilaine D'Arce, Esq. from Jaffe & Velazquez, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 308.49**, 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

Applicant seeks reimbursement of charges for an office visit and outcome assessment testing performed on 12/4/17, following a 12/1/17 motor vehicle accident. Respondent denied the claim, after delaying for additional verification, on the basis that the claimant/EIP was in a rental vehicle at the time of the loss and that in New York State, coverage follows the vehicle and therefore the claimant/EIP must seek no-fault benefits from the rental vehicle's insurance carrier. Applicant argues that the denial is untimely.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the documents in the Electronic Case Folder which is maintained by the American Arbitration Association. This decision is based upon the documents reviewed as well as the arguments made by the parties' representatives at the arbitration hearing.

The claimant (M.A.) in this matter, a 24-year-old male, was allegedly injured in a motor vehicle accident on 12/1/17. Thereafter on 12/4/17, the claimant was seen by the Applicant for an office visit and outcome assessment testing. In support of its claim for reimbursement of these services, Applicant has submitted an assignment of benefits form and an NF-3 form (hereafter referred to as "bill"). Respondent has submitted a global NF-10 as well as a bill-specific NF-10 denial of claim, which acknowledges timely receipt of the subject bill. Accordingly, Applicant has made out a prima facie case for reimbursement as a matter of law. (See, Insurance Law § 5106(a); *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742 [2d Dept 2004].)

Once applicant makes out a prima facie case, the burden shifts to respondent to timely request additional verification, deny or pay the claim. (*Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co.* 9 NY3d 312 [2007]; 11 NYCRR § 65.15(d)(1),(2); 11 NYCRR 65.15(g)(3) [within 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part].) Most defenses are precluded if not preserved in a timely denial of claim. (*Central General Hospital v. Chubb Group of Insurance Companies*, 90 NY2d 195 [1997].)

### **Evidence Contained in the Record**

The record before me reveals that the Respondent received the disputed bill for date of service 12/4/17 on 12/28/17. The NF-10 submitted indicates that the Respondent issued a final request for verification on 2/16/18, at that said verification was received on 3/20/18. The NF-10 issued on 3/20/18, states the following:

*The EIP was in a rental vehicle at the time of the loss. The EUO does not specify where the EIP picked up the vehicle, however, New York is a follow the car state therefore the EIP goes to the rental vehicle for no-fault.*

I note that the record also contains the transcript from the 2/26/18 Examination Under Oath ("EUO") of (S.A.), the driver of the vehicle involved in the subject loss (the brother of the claimant in this case).

Additionally, Respondent issued a global NF-10 denial dated 3/19/18, which has been uploaded in this case. The global denial states as follows:

*The EIP was in a rental veh (sic.) at the time of the loss. The EUO does not specify where the EIP picked up the vehicle, however, NY is a follow the car state therefore the EIP goes to the rental veh (sic.) for NF. CR (sic.) to deny the claim as non primary.*

Finally, I note that the record also contains a police accident report from the subject loss as well as two delay letters dated 1/16/18 and 2/16/18, both indicating that the claim is delayed pending the EUO of the eligible injured person.

### **Respondent's Position**

It is Respondent's position that the vehicle that the claimant (M.A.) was in at the time of the subject accident was a rental vehicle owned by a company called Always Amore RAC, LLC, located in Elizabeth, New Jersey. Applicant does not dispute this fact.

Meanwhile, the Country-Wide policy at issue, covers a 2014 Toyota Camry owned by (T.A.), the named insured (the father of both the claimant and the driver). Both (M.A.) and (S.A.) reside with the named insured, (T.A.) These facts are also not disputed by the Applicant.

Respondent maintains that under New York's Insurance Law, the claimant (M.A.), an occupant of a rental vehicle, must seek no-fault (Personal Injury Protection or "PIP") benefits through the rental car's insurance policy.

### **Applicant's Position**

It is Applicant's position that the Respondent has failed to submit evidence sufficient to sustain its defense. Furthermore, the Applicant maintains that the Respondent's denial is untimely on its face as it does not contain actual verification requests or EUO scheduling letters which serve to toll the claim.

### **Discussion**

Pursuant to 11 NYCRR 65-3.12 [a] [1]), an applicant who is an operator or occupant of an insured motor vehicle . . . who sustains a personal injury arising out of the use or operation in New York State of such motor vehicle, shall institute the claim against the insurer of such motor vehicle. Indeed, the courts have long held that "as between a no-fault insurer of a rental vehicle and a no-fault insurer of the nonowner renter, the primary source of coverage for no-fault benefits is the no-fault insurer of the rental vehicle" (*SZ Medical, P.C. v. Lancer Insurance*, 7 Misc. 3d 86 [N.Y. Misc. 2005], citing *Matter of Avis Rent-A-Car Sys., Inc. v. GE Auto Home Assur.*, 7 AD3d 704; *Matter of Sea Ins. Co. [Northbrook Prop. Cas. Ins. Co.]*, 166 AD2d 327; see also *Lancer Ins. Co. v. Republic Franklin Ins. Co.*, 304 AD2d 794). In that regard, an applicant's household auto insurer is only primary for benefits where the vehicle the applicant was occupying at the time of the accident was uninsured. See 11 NYCRR 65- 3.12(a)(4)...."

It is unclear from the evidence submitted in this case which insurance carrier insured the subject rental vehicle at the time of the accident or if it was even insured at all. The police report is silent as to the insurer of the rental vehicle and Respondent has not submitted any evidence whatsoever regarding coverage on the rental vehicle. Moreover,

Respondent has failed to submit a full copy of the insurance policy under which the claimant is covered as a resident relative of the named insured, *to wit*, (T.A.). Without the ability to review Country-Wide's complete policy and endorsements, which may include rental and substitute automobile coverage, a priority of payment issue is created.

New York's Insurance Law explicitly states that "if a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4 (a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Moreover, any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to [section 5105](#) of the Insurance Law and section 65-4.11 of this Part" (*SZ Medical, P.C. v. Lancer Insurance*, 7 Misc. 3d 86, 88-89 [N.Y. Misc. 2005]; [11 NYCRR 65-3.12](#) [b]).

Neither party has submitted evidence that would indicate when Respondent first received notice of the subject claim. Moreover, as discussed *supra*, the record is devoid of any evidence identifying another potentially responsible insurance carrier. Despite Respondent's contention that this is an issue of coverage, the case law is clear that the question of whether Respondent is responsible to pay the subject claim or if it is the responsibility of another insurance carrier is a priority of payment/source of payment issue which must be submitted to mandatory inter-company arbitration. (See (*Matter of Pacific Ins. Co. v State Farm Mut. Auto. Ins. Co.*, 150 AD2d 455, 456 [1989]; *M.N. Dental Diagnostics, P.C. v. Government Employees Ins. Co.*, 24 Misc 3d 43, 884 NYS2d 549 [App. Term. 1st Dept. 2009]; see also *Southern Westchester Orthopedics & Sports Medicine v. GEICO*, AAA Case No. 17-16-1044-0623 [Arbitrator Priya, 2018]).

Since the Respondent denied payment of the Applicant's claim solely on the stated ground that no-fault benefits were payable by the rental company's insurer, its denial raised a question concerning the responsibility or obligation to pay first-party benefits, an inter-company dispute which must be resolved through mandatory arbitration not by way of a defense in this no-fault Arbitration. (See *M.N. Dental Diagnostics, P.C.*, *id.* at 4; *Paramount Ins. Co. v Miccio*, 169 AD2d 761 [1991]; *Pacific Ins. Co. v State Farm*, 150 AD2d at 456). The onus is on Respondent to discover the identity of the rental company's insurance carrier so that it may resolve this issue in the proper forum.

Based upon the foregoing, I am unable to sustain Respondent's defense as stated in its denial. I therefore award Applicant's claim in the amount of \$308.49. A separate discussion regarding the timeliness of the denial is rendered moot.

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	Status
	Paramount Medical Services PC	12/04/17 - 12/04/17	\$308.49	Awarded: \$308.49
<b>Total</b>			<b>\$308.49</b>	<b>Awarded: \$308.49</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 08/18/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. (*LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 217 [2009].)

C. Attorney's Fees

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

As the demand for arbitration was filed after February 4, 2015, this case is subject to the provisions as to attorney fees, promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See 11 NYCRR §65-4.6. The award of attorney fees shall be paid by the insurer. 11 NYCRR§65-4.5(d). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1360.00" Id.

- 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 Nassau

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

05/06/2020  
(Dated)

Jennifer Zeidner

### **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:**  
93fca603c4ce4d8b0a963e44a0b00d90

**Electronically Signed**

Your name: Jennifer Zeidner  
Signed on: 05/06/2020