

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Radiology PC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-20-1178-6378

Applicant's File No. LIP-3863

Insurer's Claim File No. 591373

NAIC No. Self-Insured

ARBITRATION AWARD

I, Stacey Charkey, 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 08/25/2021
Declared closed by the arbitrator on 08/25/2021

Rajesh Barua, Esq. from Law Office of Ilya E. Parnas participated in person for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$ 879.73**, 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 claimant was involved in a motor vehicle accident on 7/11/19 and thereafter sought treatment for the injuries purportedly sustained therein. The issue to be determined is whether the Applicant established entitlement for No-Fault compensation. The motor vehicle accident that gives rise to this arbitration took place on 7/11/19 in the State of New Jersey. The applicant as the claimant's assignee makes a claim for medical services. The respondent has not denied the claim but contends that the assignor is not a "qualified person" as that term is defined in Insurance Law §5202(b). The issue in this arbitration is whether the applicant has established that the assignor is a "qualified

person" pursuant to Insurance Law Article 52 so that the Motor Vehicle Accident indemnification Corporation (MVAIC) was obligated to pay first party benefits to the assignor.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

It is now well settled that Applicant establishes "a prima facie showing of their entitlement to judgment as matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received 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 (2d Dep't. 2004).

MVAIC was created by statute to provide no-fault benefits to qualified persons arising from the use and operation in this state of an uninsured vehicle, *Englington Medical, P.C. v. MVAIC*, 81 A.D.3d 223 (2d Dep't. 2011). It has been held that whether or not a person is "qualified" to receive first-party benefits from MVAIC is akin to a coverage defense that can be raised at any time, *Rombom v. MVAIC*, 21 Misc.3d 131(A).

A prima facie case against MVAIC that an injured person is qualified to receive benefits from MVAIC is not made until such time as the injured person provides such information as that requested in the instant matter, *Compas Medical, P.C. v. MVAIC*, 43 Misc.3d 126(A); *Olmecs Medical Supplies, Inc. v. MVAIC*, 38 Misc.3d 140(A). Moreover, the identities of the driver and owner of a vehicle are known, the injured person must exhaust its remedies against said persons before seeking relief from MVAIC; otherwise a claim brought against MVAIC is premature, *Dr. Abakin, D.C., P.C. v. MVAIC*, 21 Misc.3d 134(A).

The proof demonstrates that the assignor was a passenger in a bus that was involved in an accident on 07/11/2018. According to the submitted NF2, the accident occurred on the NJ Turnpike, outside of New York.

MVAIC sought to determine whether the assignor was a "qualified person" under article 52 of the Insurance Law so as to be deemed a "covered person" for no-fault benefits pursuant to article 51 of the Insurance Law.

Pursuant to New York State Insurance Law 5221 (b) (2), to be "deemed a covered person" an injured person must be a "qualified person," as defined in Insurance Law 5202 (B), and must have complied with all the applicable requirements of Insurance Law Article 52.

A Qualified Person is a resident of New York State or a resident of another state or country having a substantially similar program available to New York State residents injured in that state or country. A Qualified Person is someone other than (1) an insured, or (2) the owner of an uninsured motor vehicle and his/her spouse when a passenger in such vehicle. An example of a Qualified Person is a pedestrian residing in New York State who does not own a motor vehicle and does not qualify as an insured person under any automobile liability insurance policy, who is struck by an uninsured motor vehicle in New York State.

If the injured party is a Qualified Person then the injured party must notify MVAIC with their intention to make a claim and file an affidavit (sworn statement) setting forth information including the names of the operator and owner of the uninsured vehicle, if known, and the facts in support of their claim.

MVAIC asserts that it requires several documents in order to consider the injured party for benefits. This includes: (1) Notice of Intention to Make Claim (2) Household Affidavit (3) Proof of Lack of Insurance.

It is conceded that the assignor failed to submit a Notice of Intention to Make Claim, police report, proof of residency, and proof of no insurance from the offending vehicle or from a household member's policy. Respondent further claims that the assignor does not qualify for benefits, as the accident did not occur in the State of New York.

At bar, Respondent contends that the claim is not ripe for determination against MVAIC because it has not yet been determined that the claimant was a "covered person" entitled to receive benefits from MVAIC.

Without the aforementioned documentation, I cannot find that the claimant is a qualified person entitled to receive first-party benefits from the Respondent.

In this regard, neither the applicant nor the assignor has provided any of the information requested. Accordingly, applicant does not demonstrate that the assignor is qualified for coverage under MVAIC for no-fault benefits.

Therefore, the Applicant's claim is dismissed without prejudice.

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 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 Queens

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

09/14/2021

(Dated)

Stacey Charkey

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:
8f622cd862c0835f9842261dbf97b524

Electronically Signed

Your name: Stacey Charkey
Signed on: 09/14/2021