

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Pain Specialists PC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-20-1178-7935

Applicant's File No. 00066415

Insurer's Claim File No. 616654

NAIC No. Self-Insured

ARBITRATION AWARD

I, James Hogan, 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: EIP

1. Hearing(s) held on 05/19/2022
Declared closed by the arbitrator on 05/19/2022

Mikhail Guseynov from Drachman Katz, LLP participated in person for the Applicant

Jeffrey Kadushin from MVAIC participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$427.63**, 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 EIP, a 72 year old man, was injured in an MVA on 9/10/19. Applicant is billing for 4 office visits reflecting examinations of the EIP from 10/29/19 through 1/29/2020. Respondent denied the claim predicated upon the assertion that the EIP was a bicyclist involved in a collision with a NYPD vehicle, and as per Ins. Law section 5208(a), NYPD vehicles are not considered motor vehicles, therefore, this loss would not be considered a motor vehicle accident.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

Applicant's submission:

Applicant is billing for services provided to the EIP as follows:

A follow-up office visit billed under CPT code 99214 at \$92.98 for DOS 10/29/19.

An initial or visit billed under CPT code 99204 at \$148.69 for DOS 10/30/19.

A follow-up office visit billed under CPT code 99214 at \$92.98 for DOS 12/19/19.

A follow-up office visit billed under CPT code 99214 at \$92.98 for DOS 1/29/2020.

As per the AR-1, Applicant billed \$427.63; Respondent paid \$0.00, leaving an amount in dispute of \$427.63.

In addition to its billing, the Applicant has provided:

Correspondence from the Applicant to the Respondent dated 3/27/2020. This was a response to the Respondent verification requests regarding DOS 10/29, 10/30 and 12/19/19 billed in the amounts of \$92.98, \$148.69 and \$92.98, respectively. A copy of the W-9 form is attached.

A fax transmittal letter indicating that on 7/22/2020 a 5 page fax was sent to 1-212-732-1826.

Correspondence from the Applicant to the Respondent dated 7/22/2020. This was a response to a verification request regarding DOS 1/29/2020 and billing in the amount of \$92.98. As per this letter, all bullet points mentioned in the verification requests have been responded to and copies have been attached to this letter.

Attached is a copy of Respondent's verification request dated 6/1/2020. Also provided is a W-9 form and a copy of an evaluation of the EIP dated 9/17/19 at the Applicant. There is also a copy

of a follow-up evaluation of the EIP dated 10/29/19. There is a copy of a narrative report from the Applicant dated 10/30/19. There are also copies of follow-up examinations of the EIP at the Applicant on 12/19/19 and 1/29/2020.

Respondent's submission:

Respondent contends that at the time of the accident, the EIP was a pedestrian who was struck by an NYPD vehicle. As per Insurance Law section 5208(a), NYPD vehicles are

not considered motor vehicles, therefore, this loss would not be considered a motor vehicle accident.

Additionally, coverage would have been denied due to the Notice of Intention to Make a Claim not being submitted in a timely manner. Additionally, the EIP has not demonstrated that there was no insurance in the household.

A copy of the police accident report has been provided. It indicates that the EIP was a bicyclist which was struck by a backing NYPD vehicle. The report indicates that the cars right rear tire hit the left tire of the bicycle causing the bicycle to tip over and damaged the right tire. No injuries were reported at the accident scene.

A copy of the EIP's NF-2 has been provided. It indicates that the policyholder was NYC POLICE DEPT.

On 10/16/19, Respondent sent the letter to the EIP. In this letter Respondent advises the EIP "Per INS. LAW SEC. 5208(a), NYPD vehicles are not considered motor vehicles therefore this loss won't be considered to be a motor vehicle accident. Please file your claim with The City of NY; Office of the Comptroller, Municipal Building, 1 Centre St., New York, NY 10007-2341."

On 10/6/19, Respondent issued a global NF-10 denying all claims for the same reason that it stated in the above 10/16/19 letter.

On 1/6/2020, Respondent sent a letter to the Applicant referencing the EIP and DOS 10/29/19 and billing in the amount of \$92,98. As per this letter, Respondent advises Applicant that the EIP has not yet met the requirements to be "deemed a covered person." In this letter it says that outstanding was a W-9 form indicating the correct IRS # and address as well as proof the facility is registered with the NYS Department Office of Professions.

This letter also says "Per INS. LAW SEC. 5208(a), NYPD vehicles are not considered motor vehicles therefore this loss won't be considered a motor vehicle accident."

On 2/10/2020, Respondent sent another letter to the Applicant re DOS 10/29/19 and billing in the amount of \$92.98. This letter was marked Second Request. The content of this letter

reiterates the content of Respondent's 1/6/2020 letter.

On 1/9/2020, Respondent sent a letter to the Applicant referencing the EIP and DOS 10/30/19 and billing in the amount of \$148.69. As per this letter, Respondent advises Applicant that the EIP has not yet met the requirements to be "deemed a covered person." In this letter it says that outstanding was a W-9 form indicating the correct IRS # and address as well as proof the facility is registered with the NYS Department Office of Professions.

This letter also says "Per INS. LAW SEC. 5208(a), NYPD vehicles are not considered motor vehicles therefore this loss won't be considered a motor vehicle accident."

On 2/14/2020, Respondent sent another letter to the Applicant re DOS 10/30/19 and billing in the amount of \$148.69. This letter was marked Second Request. The content of this letter

reiterates the content of Respondent's 1/9/2020 letter.

In supplemental submissions, the Respondent has uploaded copies of decisions dealing in 2 separate issues. The first issue is the timely filing of a Notice of Intention to File a Claim. The 2nd issue deals with the requirement that claimant's exhaust all available remedies prior to filing a claim with the Respondent.

Each of these filings is accompanied by copies of cases in support of the issue presented.

As to the timely filing of a Notice of Intention to File a Claim, the injured person must be a "qualified person" and must have complied with all requirements set forth in Insurance Law section 5208. The Applicant must be a qualified person in order to file a Notice of Claim. The decisions reflect that the Notice of Intention to File a Claim is a condition precedent to the right to apply for payment from MVAIC. "Compliance with the statutory requirement of timely filing a notice of claim must be established in order to demonstrate that plaintiff's assignor is a 'covered person' who is entitled to recover no-fault benefits from MVAIC."

If the plaintiff did not establish that a Notice of Intention to Make A Claim form was submitted to MVAIC, plaintiff failed to establish his prima facie case.

As to the exhaustion of remedies, the cases indicate that prior to seeking relief from MVAIC, the plaintiff must first exhaust all remedies against the defendant. Applying the above to the instant case, there is no indication that the EIP or the Applicant filed any type of claim with the NYC Office of the Comptroller, therefore, it had not exhausted all remedies prior to filing against MVAIC.

At the Hearing:

Applicant relied upon its submission.

Respondent relied upon its submission and the fact that the Insurance Regulations exclude police vehicles from the definition of a motor vehicle.

Findings:

Applicant is billing for services provided to the EIP as follows:

A follow-up office visit billed under CPT code 99214 at \$92.98 for DOS 10/29/19.

An initial or visit billed under CPT code 99204 at \$148.69 for DOS 10/30/19.

A follow-up office visit billed under CPT code 99214 at \$92.98 for DOS 12/19/19.

A follow-up office visit billed under CPT code 99214 at \$92.98 for DOS 1/29/2020.

As per the AR-1, Applicant billed \$427.63; Respondent paid \$0.00, leaving an amount in dispute of \$427.63.

Respondent denied the claim predicated upon the assertion that the EIP was a bicyclist involved in a collision with a NYPD vehicle, and as per Ins. Law section 5208(a), NYPD vehicles are not considered motor vehicles, therefore, this loss would not be considered a motor vehicle accident.

In other correspondence, the Respondent said that coverage would have been denied due to the Notice of Intention to Make a Claim not being submitted in a timely manner.

Additionally, the EIP has not demonstrated that there was no insurance in the household.

After reviewing the documentation contained in the file, I have determined that the EIP has not been deemed a "covered person." The requests for additional verification indicate that documentation was outstanding from the Applicant.

They also indicate that as per Insurance Law section 5202 (a) an NYPD vehicle is not considered a motor vehicle, therefore, the loss would not be considered a motor vehicle accident.

I have reviewed Insurance Law section 5202(a) and it does say that police vehicles are exempt from the definition of a motor vehicle.

Additionally, Section 5208 of the Insurance Law deals with the filing of a Notice of Claim.

Based upon the totality of the circumstances, the claim is denied.

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 Suffolk

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

05/20/2022
(Dated)

James Hogan

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:

af9c487f2d91f1b5a6f52f55e3faefd1

Electronically Signed

Your name: James Hogan
Signed on: 05/20/2022