American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bay Pharmacy 19 INC (Applicant)	AAA Case No.	17-20-1178-9957
	Applicant's File No.	140.369
- and -	Insurer's Claim File No.	107356503
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Bryan Hiller, 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 09/06/2022
   Declared closed by the arbitrator on 09/06/2022

   Vincent Ku, Esq. from Tsirelman Law Firm PLLC participated in person for the Applicant

   Fotini Lambrianidis from American Transit Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$1,787.42**, 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

   Respondent did not issue a denial for the bill for medication provided on date of service November 20, 2019 provided to the Assignor on the grounds that there are outstanding open verification requests pending. The issue for these dates of service is whether or not this matter is ripe for arbitration and, if so, whether or not the Applicant is entitled to No-fault benefits.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement, along with interest and counsel fees, under the No-Fault Regulations, for the costs associated with medication provided to the Assignor on November 20, 2019 in connection with injuries sustained by Assignor in a motor vehicle accident on November 1, 2019. The bill for the treatment at issue was never denied as the Respondent claims that valid verification requests were sent to the Applicant and never fully responded to. This decision is based upon the written submissions of counsel for the respective parties as well as oral arguments at the September 6, 2022 hearing. I have reviewed the documents contained in the Record as of the date of the hearing.

Assignor, then 34 year old male backseat uber passenger, was involved in a motor vehicle accident on November 1, 2019. Following the accident, Assignor was taken to the emergency room at Jacobi Hospital where he was evaluated, treated and released. Due to continued symptomology, Assignor came under the care of multiple conservative treatment providers including Eastern Medical Practice PC. As part of the treatment plan, PA Annisha Creary prescribed the subject medications. The medication at issue was provided to the Assignor by Applicant Bay Pharmacy 19 Inc. on November 20, 2019 and the notes related to the device are attached to the Record.

Respondent contends that they timely and properly requested verification from the Applicant on January 7, 2020, February 11, 2020 and March 3, 2020 and to date have not received all of the verification they requested. As such, these bills are premature, and not ripe for arbitration. These requested "1. Completed No-Fault applicant for benefit. 2. Letter of Referral/Letter of Medical necessity from referring/Prescribing physician to show causal relationship to accident on records (Annisha Creary PA). Report to Physician/PA/Provider when Prescription was issued. License/Credentials fro/from Annisha Creary PA. Please submit all/any other PRESCRIPTIONS/REFILLs provided to the above claimant by our company or all companies that are affiliated with your corporation. A letter summarizing these services must be forwarded with the reports/treatment plan. Please include reports and a letter of necessity from the referring/treating physician to show causal relationship to the accident of record. 3. When did the patient provide you with the signed Assignment of Benefits Form? When did the Health Proivder sign the Assignment of Benefits form? Did he patient choose the pharmacy in this referral?" These letters were sent to the Applicant at valid addresses, the Assignor at a valid address and proof of mailing of said letters are attached.

Pursuant to 11 NYCRR 65-3.5 (c) of the no-fault regulations, the insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested. Thereafter, at a minimum, if any requested verifications has not been supplied to the insurer 30 calaendar days after the original request, the insurer shall, within 10 calendar days, follow up with the party from whom the verification was requested, either by telephone call, properly documented in the file, or by mail (see 11 NYCRR 65-3.6 (b)).

Once the insurer proves that it timely mailed its request and follow-up request for verification to the health care provider, if the latter does not demonstrate that it provided the insurer with the requested verification prior to the commencement of litigation, the litigation is premature inasmuch as the 30-day period within which the insurer was required to pay or deny the claim did not commence to run (see Proscan Imaging, P.C.

v. Travelers Indemnity Co., 28 Misc.3d 127(A), 2010 N.Y. Slip Op. 51176(U), 2010 WL 2681691 (App. Term 2d, 11th &13th Dists. July 7, 2010)).

The verifications requests appear to be timely and valid. Respondent noted that they did not receive a full response. Specifically, Respondent argued the Assignment of Benefits remained outstanding.

There is a growing body of case law that stresses proaction, and not inaction, by both a No-Fault carrier and a healthcare provider in resolving issues relative to a carrier's verification requests and/or a healthcare provider's responses thereto (see Westchester Med. Ctr. v. New York Cent. Mut. Fire Ins. Co., 262 AD 2d 553, 692 N.Y.S. 2d 665(App Div, 2ndDept - 1999); Urban Radiology PC v. Tri-State Consumer Ins. Co., 2010 N.Y. Slip Op 50987(U), 27 Misc 3d 140(A) (App Term, 2ndDept - 2010)).

Here, Applicant argued that the verification request letters were responded to providing all the appropriate documentary evidence. Respondent argued that the Assignment of Benefits for this provided was timely and appropriately requested and thus the case had been properly pended.

As such, Applicant did nothing until confronted with a ripeness defense interposed in connection with the within arbitration. Sitting idly by and ignoring verification requests does not in this Arbitrator's view serve one of the primary goals of the No-Fault system, to wit, the prompt adjudication of claims. Such conduct also unfortunately results in the preclusion of any argument by the Applicant relative to the validity of the verification requests in issue (see Crescent Radiology, PLLC v. American Tr. Ins. Co., 2011 NY Slip Op 50622(U), (App Term, 2ndDept - 2011)).

I find Respondent has established that they properly delayed the claim pending outstanding verification. Respondent has further shown that there remains outstanding verification and same had not been produced. Applicant fails to show otherwise. As such, the bill for the date of service November 20, 2019 is premature and not ripe for arbitration. Accordingly, these bills are dismissed without prejudice.

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 Nassau

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

09/12/2022
(Dated)

Bryan Hiller

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:
b85e107e77dc35458520bb79fd3ee624

Electronically Signed

Your name: Bryan Hiller
Signed on: 09/12/2022