

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Jasoda Dhupan , Daniel Ramessar PA  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No. 17-23-1282-5880

Applicant's File No. MB-88585,  
MB-88503

Insurer's Claim File No. 115027

NAIC No. 16616

### **ARBITRATION AWARD**

I, Teresa Girolamo, Esq., 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: B.S.

1. Hearing(s) held on 08/29/2023  
Declared closed by the arbitrator on 08/29/2023

Mark Bratkovsky, Esq. from Law Offices of Mark Bratkovsky PC. participated virtually for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,082.52**, 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

Whether Applicant Jasoda Dhupan's bill for date of service of 9/21/2022 is not ripe for Arbitration as this matter must be presented first to the Worker's Compensation Board.

Whether Applicant Daniel Ramessar PA's bill for date of service of 9/8/2022 is premature as there is outstanding verification.

Whether each Applicant billed in excess of fee schedule?

#### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing. This decision is based on my review of that file, as well as the arguments of the parties at the hearing. Each of the parties appeared via ZOOM.

On 1/14/2023 Counsel for Applicants filed for Arbitration. The first bill listed in the AR-1 is for date of service of 9/21/2022 in the amount of \$1,428.76. This bill is for Applicant Jasoda Dhupuan.

The second applicant listed is Daniel Ramessar PA for a bill in the amount of \$1,653.76 for date of service of 9/8/2022.

##### **Applicant 1: Jasoda Dhupuan:**

In this case Applicant Jasoda Dhupuan billed Respondent the sum of \$1,428.76 for date of service of 9/21/2022 for a follow up office visit billed in the amount of \$203.76 11 charges of dry needling each in the amount of \$75.00 and 4 charges for dry needling each in the amount of \$100.00.

For this bill, same was received on 10/11/2022 and timely denied on 11/3/2022 based upon a Worker's Compensation defense as well as fee schedule.

Respondent notes that on the NF-2 box 16 was checked off that B.S. was working at the time of the accident. Respondent argues that this is enough to demonstrate a triable issue of fact tht must be heard by the Worker's Compensation Board prior to proceeding to Arbitration.

Applicant contends that the box more likely than not was checked off in error.

The first question that must be addressed is whether there is any question of fact for consideration by the Workers' Compensation Board. As long as there is a question as to whether the Assignor was working within the scope of his employment when an accident occurred, the claim should go to the Workers' Compensation Board first, for a determination as to that issue, and then if it is determined that the accident did not occur within the scope of the Assignor's employment, and the accident involved a motor vehicle such that no-fault insurance would apply, then it should be decided by a no-fault arbitrator.

The primacy of Workers Compensation for coverage of injuries that occur when the injured party is in the course of employment has been established. *Arvatz v. Empire Mutual Insurance Company*, 171 AD2d 262, 575 NYS2d 836 (1st Dept. 1991). The court in *Arvatz* stated, in part, as follows:

"Where the availability of workers compensation hinges upon the resolution of questions of fact or upon mixed questions of fact and law, the plaintiff may not choose the courts as the forum for the resolution of such questions. The Legislature has placed the responsibility for these determinations with the Workers Compensation Board and there it must remain. (*O'Rourke v. Long*, 41 NY2d 219, 228.) The Board has "primary jurisdiction" to resolve the question of coverage and a "plaintiff has no choice but to litigate this issue before the Board." (*Liss v. Trans Auto Systems, Inc.*, 68 NY2d 15, 21.) The *Arvatz* court went on to say that "the no-fault insurer is obligated to pay first-party benefits only if the workers compensation carrier "denies liability for payment of benefits, in whole or in part."....As between no-fault and workers compensation, the latter is "primary" and an injured party may not " 'elect' between workers compensation benefits and no-fault benefits." (*Carlo Service Corp. v. Rachmani*, 64 AD2d 579, 580, quoting *Grello v. Daszykowski*, 58 AD2d 412, 415, n2, revd. on other grounds 44 NY2d 894.) Moreover, Insurance Law Sec. 5102(b)(2) expressly provides that workers compensation benefits serve as an offset against 1st-party benefits payable under no-fault as compensation for "basic economic loss." The chief issue here is whether an issue of fact/and or law is present which must first be addressed by the Workers Compensation Board. Workers Compensation is primary over No-Fault.

In this case therefore I find that there is an issue of fact that must be resolved prior to proceeding to Arbitration. Therefore Applicant : Jasoda Dhupan's claim is dismissed without prejudice. Thus the issue of fee schedule is not ripe for consideration.

**Applicant 2: Daniel Ramessar PA.**

For Applicant Daniel Ramessar, PA., Applicant billed Respondent \$1,653.76 for date of service of 9/8/2022. Respondent acknowledges that the bill was received and sent out verifications on 10/19/2022 and again on 11/23/2022.

For each of the verifications Respondent requested the following:

*Please submit referral/prescription from referring physician.*

*Submit report of the referring doctor for the date referral/prescription was done.*

*Please submit detailed letter of necessity from the referring physician to show causal relationship to the accident of record.*

*Bill delayed pending the assignment of benefits form.*

*Submit W-9 form.*

As a complete proof of claim is a prerequisite to receiving no fault benefits, a claim need not be paid or denied until all demanded verification is provided (see, 11

NYCRR 65- 3.5[c]; *Montefiore Med. Ctr . NY Central Mutual Fire Ins. Co.*, 9 A.D.3d 354, 780 N.Y.S.2d 161 (2nd Dep't 2004); *NY & Presbyterian Hosp. v. American Transit Ins. Co.*, 287 A.D.2d 699, 733 N.Y.S.2d 80 (2nd Dep't 2001); *Hosp. for Joint Diseases v. Elrac, Inc.* , 11 A.D.3d 432, 783 N.Y.S.2d 612 (2<sup>nd</sup> Dep't 2004).

When verification has properly been requested on a claim, a follow up request has been issued and verification has not been received, any action or arbitration to collect that claim is premature. *Metroscan Medical Diagnostics PC v. Progressive Cas. Ins. Co.*, 15 Misc.3d 126A, 836 N.Y.S.2d 500, 2007 NY Slip Op 50500U, 2007 N.Y. Misc. LEXIS 903 (App. Tm, 2<sup>nd</sup> Dep't 2007); *Doshi Diagnostic Imaging Servs. v. State Farm Ins. Co.*, 16 Misc.3d 42, 842 N.Y.S.2d 153, 2007 NY Slip Op 27193, 2007 Misc. LEXIS 3524 (App. Tm, 2<sup>nd</sup> Dep't 2007); *Elmont Open MRI & Diagnostic Radiology P.C. d/b/a/ All County Open MRI & Diagnostic Radiology v. State Farm Ins. Co.*, 15 Misc.3d 139A, 841 N.Y.S.2d 819, 2007 NY Slip Op 50988U, 2007 N.Y. Misc. LEXIS 3526 (App. Term, 2d Dept 2007).

If a provider, who has failed to respond to verification requests, brings an action, the action should be dismissed as premature. *Elite Chiropractic Services PC v. Travelers Ins. Co.*, 9 Misc.3d 137(A) (App Tm, 1<sup>st</sup> Dep't 2005).

In this case Respondent contends that the responses remaining outstanding.

Applicant offers a copy of the 10/19/2022 verification request with handwritten notes however, for this matter Respondent contends that these were only received with the Arbitration as there is no proof of mailing and not even a cover letter to indicate when it was allegedly mailed.

As such having considered the arguments regarding Applicant 2's claim, here I find that there is outstanding verification at the time of filing as there is on proof of mailing or exchanging the requested information before the AR-1 was submitted to AAA. As such this claim is also dismissed without prejudice. Hereto the issue of fee schedule is not ripe for consideration.

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 CT

SS :

County of Fairfield

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

08/29/2023  
(Dated)

Teresa Girolamo, Esq.

#### **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:**  
65510754db42146df41ff90ad0ab1a7e

**Electronically Signed**

Your name: Teresa Girolamo, Esq.  
Signed on: 08/29/2023