

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

MTA Bus Company
(Respondent)

AAA Case No.	17-23-1282-4011
Applicant's File No.	M22-708791
Insurer's Claim File No.	BU202206170023001
NAIC No.	Self-Insured

ARBITRATION AWARD

I, Marcie Glasser, 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 10/23/2023
Declared closed by the arbitrator on 10/23/2023

James Errera, Esq. from Shapiro & Associates, P.C. participated virtually for the Applicant

Myrna Archer, Esq. from MTA Bus Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,467.47**, 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

This arbitration stems from treatment of a 66 year old female bus passenger who was injured on July 17, 2022 and underwent treatment on August 11, 2022. Applicant submitted the bills to MTA. The issue is whether there is coverage for this accident with MTA; and the related issue is whether submission for reimbursement of the claim to the MTA is sufficient submission of the claim to the New York City Transit Authority for purposes of establishing prima facie entitlement to reimbursement.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives. I reviewed the documents contained in the electronic file for both parties and make my decision in reliance thereon.

It is Applicant's *prima facie* obligation to establish its entitlement to payment for each service for which reimbursement is sought. It is well settled that a health care provider establishes its *prima facie* entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and amount charged for the services rendered and that payment of no-fault benefits was overdue (See Insurance Law Section 5106 a: *Mary Immaculate Hosp . v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 546 [2004]; *Amaze Medical Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128 A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51071U [App Term, 2d & 11th, Dists.]).

Respondent submitted the claim for date of service August 11, 2022 to MTA Bus Co., 128-15 28th Ave, Flushing, NY 11354, as noted on the Verification of treatment (NF-3) form and proof of mail.

A claim-specific denial has not been issued. Respondent issued a global denial to Claimant dated August 26, 2022 which states "THE INJURED PARTY IS NOT AN ELIGIBLE PERSON IN THAT THE INJURIES DID NOT ARISE OUT OF THE OWNERSHIP, USE AND OPERATION OF AN MTA BUS COMPANY VEHICLE. BUS BELONGS TO NYCTA. PLEASE SUBMIT CLAIM TO 130 LIVINGSTON STREET, BROOKLYN, NY 11201: claim # BU202206170023001"

In support of its coverage defense and corresponding defense that submission of the claim to MTA is not sufficient submission of the claim to the New York City Transit Authority, Respondent submitted the Affidavit of Seth Norman, Claims Examiner for No-Fault Claims, dated July 31 2023. Mr. Norman averred that a NYCT file was opened for this loss as this bus operates out of a NYCT facility; NYCT did not receive a bill from Applicant provider; MTA Bus Co. and NYCT are separate and distinct entities; MTA Bus Co. does not insure vehicles owned or operated by NYCT, or vice versa; and neither entity is an agent for the other, in any respect, including claims handling and litigation.

Applicant did not send the bills to NYCTA, but rather sent the bills to MTA Bus Co. the entity noted on the Application for No-Fault Benefits (NF-2) form to be the carrier. However, based on the totality of evidence, coverage is with NYCTA, and the claim sent to the MTA is not sufficient submission of the claim to NYCTA for purposes of establishing *prima facie* entitlement to reimbursement.

Accordingly, in order to afford the Applicant an opportunity to submit completed bills to meet Applicant's *prima facie* burden of proof, the claim is 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 NY

SS :

County of Nassau

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

10/24/2023
(Dated)

Marcie Glasser

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:
545f17de1055f600ab10fca5836d4e4f

Electronically Signed

Your name: Marcie Glasser
Signed on: 10/24/2023