

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nassef F. Hassan PH P.C.
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1287-8884

Applicant's File No. 2937846

Insurer's Claim File No. 109805201

NAIC No. 16616

ARBITRATION AWARD

I, Lori Ehrlich, 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 11/28/2023
Declared closed by the arbitrator on 11/28/2023

Gary Pustel, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Dimitriy Dykman from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,644.26**, 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

In dispute are Applicant's claims in the sum of \$2,644.26 for radiological services rendered to Applicant's assignor, M.M., said claim arising from automobile accident on May 18, 2021.

Respondent has denied these claims, alleging, among other defenses, that the Claimant was in the course of his employment at the time of the accident and Worker's Compensation is primary.

The parties appeared via Zoom.

I have reviewed the documents contained in the ADR as of November 28, 2023

4. Findings, Conclusions, and Basis Therefor

The services at issue were provided to the Claimant from June 29, 2021 to September 23, 2021. Applicant has set forth a prima facie case by the submission of a completed health claim form documenting the fact and amount of the loss sustained (Amaze Medical Supply v. Eagle Ins. Co., 2 misc. 3d 128A, 784NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11th Jud. Dusts.]). Respondent has timely denied the bill at issue raising a Workers Compensation defense.

At the hearing Respondent's counsel maintained that there existed sufficient questions of law and fact, which required that the instant case be referred to the Workers Compensation Board to resolve the question of coverage by determining whether the Claimant was in the course of his employment at the time of the accident. Respondent has submitted the police report as well as the affidavit of Michael Duignan, Respondent's Director of Underwriting, who in addressing the subject policy of insurance states that the policy is a taxi policy issued to M.M., as a "for hire" vehicle bearing New York State issued Taxi and Limousine Commission license plate number T761023C. Moreover, Respondent has also submitted the Claimant's NF2 wherein the Claimant did not respond to a request as to whether he was in the course of his employment at the time of the accident.

Upon careful review of the evidence presented I find that the proof is persuasive and sufficient to meet the Respondent's burden of proof to sustain its workers compensation defense, and therefore, the matter must be referred to the Workers' Compensation Board for consideration. Accordingly, 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 Westchester

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

11/28/2023

(Dated)

Lori Ehrlich

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:
1f4018868b05c03bc3175dc758233dd0

Electronically Signed

Your name: Lori Ehrlich
Signed on: 11/28/2023