

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Midwood Surgical Supplies Inc
(Applicant)

- and -

Kemper/Lumbermans/Kemper A Unitrin
Business
(Respondent)

AAA Case No. 17-23-1295-2568

Applicant's File No. 18972

Insurer's Claim File No. 22123751450

NAIC No. 10914

ARBITRATION AWARD

I, Gillian Brown, 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 12/12/2023
Declared closed by the arbitrator on 12/12/2023

Frank Patruno, Esq., from Frank S. Patruno Law Offices, P.C participated virtually for the Applicant

Christine Lee, Esq., from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,907.50**, was AMENDED and permitted by the arbitrator at the oral hearing.

The parties agreed upon a reduced amount in dispute of \$1617.65 to conform to the fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Medical necessity is not at issue in this case. The EIP was involved in a motor vehicle accident on 6/14/22 and received services from the claimant on 7/31/22. Reimbursement has not been denied; respondent contends that the claim is not ripe for arbitration, because there is an unanswered verification request.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. This hearing was conducted using documents contained in the ADR Center. Any documents contained in the ADR Center folder for this matter are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR Center maintained by the American Arbitration Association.

The record shows that upon receipt of a timely bill for date of service 7/31/22, respondent sent verification requests on 8/30/22 and 9/29/22, requesting the "actual MRI films" taken. On 9/6/22 and again on 10/7/22, claimant responded to the requests, explaining that it was not in possession of the actual MRI films. Respondent's request indicated that it had copied in the radiologist on both requests. Respondent contends that it has never received the films, and that therefore the claim herein is premature.

As per 11 NYCRR 65-3.5(c), "[t]he insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." Information sought as additional verification is not necessarily that which can be found on the prescribed verification forms "but any information that the carrier finds necessary to properly review and process the claim." Westchester Medical Center v. Travelers Property & Casualty Ins. Co., 2001 WL 1682931 (Sup. Ct. Nassau Cty., Ralph P. Franco, J., Oct. 10, 2001).

On the record before me, I find that the claimant has sufficiently complied with the verification requests to the best of its ability, and that the failure of respondent to receive the films is due solely to its own actions.

Notwithstanding the respondent's statement in the verification letters that, "the radiologist was carbon copied on this letter," respondent did not actually copy the radiologist. Rather, it copied in a provider named, "CitiMed," which is not the facility that administered the MRI. Rather, the report of the MRI clearly states that the provider was "Kolb Radiology," which was not copied on the request.

The parties having agreed to a reduced amount in dispute pursuant to the new fee schedule, I find for the claimant in the amount of \$1617.65.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Midwood Surgical Supplies Inc	07/31/22 - 07/31/22	\$5,907.50	\$1,617.65	Awarded: \$1,617.65
Total			\$5,907.50		Awarded: \$1,617.65

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/21/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a

denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Erie

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

12/14/2023
(Dated)

Gillian Brown

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:
5dd12d7375e1c8dc57017c21bae546f4

Electronically Signed

Your name: Gillian Brown
Signed on: 12/14/2023