

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Myrtle Avenue Trading LLC
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-22-1259-4304

Applicant's File No. 110627

Insurer's Claim File No. 18029111

NAIC No. Self-Insured

ARBITRATION AWARD

I, Ann Lorraine Russo, 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: patient

1. Hearing(s) held on 12/21/2023
Declared closed by the arbitrator on 12/21/2023

Nison Mirakov, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Raymond Mak, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,512.00**, 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

The dispute in this case is the nonpayment by the respondent for CPM medical equipment services provided by the applicant from 5/2/2022 through 5/15/2022 to the forty-year-old male patient as a result of a motor vehicle accident on 1/18/2022. The respondent issued a denial based upon a peer review report by Dr. Ronald Mann in this case.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the electronic case folder as of the date of the hearing and oral arguments of counsel for the respective parties. No witness testimony was presented at the hearing.

This case is a companion case with another case for the same applicant, patient and date of accident on 1/18/222 for different dates of service bearing American Arbitration Association case number 17 22 1264 8135.

The dispute in this case is the nonpayment by the respondent for CPM medical equipment services provided by the applicant from 5/2/2022 through 5/15/2022 to the forty-year-old male patient as a result of a motor vehicle accident on 1/18/2022. The respondent issued a denial based upon a peer review report by Dr. Ronald Mann in this case. The amount in dispute is \$1,512.00 for the medical equipment services in dispute in this case.

A review of the competent evidence in the record reveals that Applicant established a prima facie case of entitlement to reimbursement of its claim, by the submission of completed NF-3 forms documenting the facts and amounts of the losses 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. Dists.]) and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Also, in this case, Respondent's own denials demonstrate that it received Applicant's claim forms. Therefore, I find Applicant established a prima facie case. Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. (See *Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004 NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

However, even before determining whether Respondent met its burden of proof, it must first be determined whether Respondent's defense survives preclusion. In a no-fault action, a defense, other than one based upon a lack of coverage, survives preclusion only if raised in a denial that is (1) timely, *Presbyterian Hosp. in the City of New York v. Maryland Casualty Ins. Co.*, 226 A.D.2d 613 (2nd Dept. 1996); *Central Gen. Hosp. v. Chubb Group of Ins. Co.*, 90 N.Y.2d 195 (1997), (2) includes the information called for in the prescribed denial of claim form, 11 NYCRR § 65-3.4 (c) (11); 3 *Nyack Hosp. v. Metropolitan Prop. & Cas. Ins. Co.*, 16 A.D.3d 564 (2d Dept. 2005); *Nyack Hosp. v. State Farm Mut. Auto. Ins. Co.*, 2004 WL 2394038, 2004 NY Slip Op 07663 (2d Dept. Oct. 25, 2004); *Summit Psychological, P.C. v. General Assur. Co.*, 9 Misc.3d 8, 801 N.Y.S. 2d. 117, 2005 N.Y. Slip OP. 25263, (App Term 2nd Dept., 2005); *Shtarkman v. Allstate Ins. Co.*, 8 Misc.3d 129(A), 2005 NY Slip Op 51028(U) (App Term 2d & 11th Jud Dists.), or is not fatally defective, and (3) "promptly apprise(s) the claimant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated", *General Accident Ins. Group v. Cirucci*, 46 N.Y.2d 862, 864, 414 N.Y.S.2d

512, 387 N.E.2d 223 (1979); New York University Hosp. Rusk Ins. v. Hartford Acc. & Indem. Co., 32 A.D.3d 458, 2006 NY Slip Op 06223 (2d Dept. 2006). The respondent has established its denials based upon the peer review report in this case.

The peer review report by Dr. Ronald Mann is not persuasive pertaining to the medical necessity for the CPM medical equipment rental services provided to the patient's left shoulder after surgery in this case. The peer reviewer noted the lack of any medical history for the patient's left shoulder and did not address the entire and complete findings contained in the MRI test results report for the patient's left shoulder. The MRI test results dated 2/8/2022 for the left shoulder provided tears, which were not sufficiently discussed and implemented in the peer review report. The patient's duly sworn no fault application noted various injuries, including the left shoulder in support of the treatment, surgical services and medical equipment services provided to the patient. The peer review does not sufficiently incorporate or discuss the pertinent medical information contained in the medical records in support of the recommendations and conclusions provided in the peer review report denying the medical equipment services in this case. The peer reviewer noted a list of medical records reviewed in the reports. The peer reviewer possessed several diagnostic and medical records for the patient but does not sufficiently incorporate any of the diagnostic test findings and results or medical events in the medical records and physical examination reports. The peer reviewer's opinions, analysis and conclusions are not consistent. The peer reviewer does not implement or discuss the pertinent medical information contained in the medical records that provide the patient's medical history, mechanism of the motor vehicle accident on 1/18/2022 and course of medical treatment for the patient's injuries as a result of the accident and the patient's condition and status. The peer reviewer does not adequately address the course of medical treatment conducted prior to the surgical services and the results. The patient's treating medical providers, physicians and patients noted the patient's pertinent lack of significant improvement during the course of conservative treatment and concluded that the surgical intervention services and associated services, including the medical equipment in this case were warranted in this case. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the applicant's medical records in this case.

The peer reviewer does not sufficiently address or incorporate the total and complete findings contained in the medical reports and reports. The applicant's medical reports contain sufficient information in response to the concerns provided in the peer review reports by Dr. Mann. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the applicant's medical records in this case. The applicant's medical reports contain sufficient information in response to the concerns provided in the peer review report. The medical records provide pertinent information and complaints for the patient's left shoulder that did not sufficiently progress leading to the medical determination to perform the surgical services for the patient's left shoulder and medical equipment services. The peer reviewer does not sufficiently discuss and incorporate the pertinent clinical findings and events in the peer review reports in support of the opinions, recommendations and conclusions that the medical equipment services in this case was not medically necessary. The peer reviewer does not implement the significant clinical events and findings for the specific patient that sustained injuries as a result of a motor vehicle accident on 1/18/2022. The applicant's medical records are

consistent and persuasive and provide the patient's continued subjective complaints and positive objective findings in support of the medical decision to implement and provide the surgical services and treatment, including the medical equipment. The applicant's medical records provided the patient's injuries sustained in the motor vehicle accident on 1/18/2022 and course of medical and surgical treatment. The applicant's medical reports sufficiently incorporate the medical equipment services in the patient's course of medical treatment and the way the services affected the patient's status and recovery. There are medical reports that provide the medical equipment services affected the patient's status and well-being. The peer reviewer does not discuss the specific patient in this case for these specific circumstances. The peer reviewer did not sufficiently apply the medical general principles and standards to the prescription and utilization of the medical equipment services in this case. Consequently, the medical equipment services performed by applicant for the patient in this case are granted.

Based upon the evidence presented in this case, it is the opinion of this Arbitrator that the applicant has established that the medical equipment services were medically necessary in this case.

Accordingly, the applicant's claim is granted.

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	Status
	Myrtle Avenue Trading LLC	05/02/22 - 05/15/22	\$1,512.00	Awarded: \$1,512.00
Total			\$1,512.00	Awarded: \$1,512.00

B. The insurer shall also compute and pay the applicant interest set forth below. 07/22/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay the applicant interest from the date of the arbitration filing on 7/22/2022.

C. Attorney's Fees

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

The respondent shall pay the applicant attorney fees pursuant to 11 NYCRR Section 65-4.6.

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 Nassau

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

12/28/2023
 (Dated)

Ann Lorraine Russo

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:
6fc08b6db4ea69f34fa2ccb1bbc3f591

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 12/28/2023