

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Alan Beckles MD
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-22-1259-7224

Applicant's File No. DK22-257422

Insurer's Claim File No. 1111377

NAIC No. 16616

ARBITRATION AWARD

I, Felix Papadakis, 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: Assignor/IP

1. Hearing(s) held on 12/29/2023
Declared closed by the arbitrator on 12/29/2023

Applicant from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Respondent from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$445.22**, 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

There are two matters being heard today one of which was decided previously.

The two matters being heard today, both relating to the same Assignor, are defended on premature filing (verification) and causation. It is the causation matter that has already been decided.

The date of accident was 3/27/22. The IP was female, aged 36 and a passenger. Her initials are CB.

The hearings were conducted by Zoom.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the evidence herein and this decision is final as to the issues before me.

This issue has its crux in the process of verification.

Here is the relevant case law on verification:

"Just as the insurer has a duty to speedily process claims, the claimant for benefits has a duty of cooperation in supplying information reasonably requested by the insurer to process the claim." *Dilon Medical Supply Corp. v. Travelers Ins. Co.*, 7 Misc. 3d 927, 796 N.Y.S.2d 872 (Civ. Ct. Kings Co. 2005). Applicants and/or Assignors "cannot simply rest on its laurels and ignore a verification request.

Since the [Applicant/Assignor] desires to be paid the onus is on it to ensure that the [Respondent] has all of the required information to verify and pay the claim." *D&R Medical Supply, Inc. v. Clarendon Nat. Ins. Co.*, 22 Misc. 3d 1127(a), 881 N.Y.S.2d 362 (Civ. Ct. Kings Co. 2009). "Any confusion on the part of [an applicant/assignor] as to what was being sought should [be] addressed by further communication, not inaction." *Westchester County Medical Center v. New York Central Mut. Ins. Co.*, 262 A.D. 553, 692 N.Y.S.2d 665 (2d Dept 1999).

If a Plaintiff deems a Verification Request to be defective and or unreasonable, it is incumbent on that Plaintiff to convey that information to the Defendant and to state the reasons thereof, thereby giving the Defendant the opportunity to respond accordingly.

The [insurer] should not be put in a position to second guess the reason or reasons why the [claimant] has failed to respond to the request." *Canarsie Chiropractic, P.C. v. State Farm Mut. Auto. Ins. Co.*, 27 Misc. 3d 1228A, 911 N.Y.S.2d 691 (Civ. Ct. Kings Co. Silvia Ash, J. May 25, 2010).

A failure to raise an objection to the request will even result in a waiver of the defense even if the notices were defective and unreasonable. *Canarsie Chiropractic, P.C. v. State Farm Mut. Auto. Ins. Co.*, 27 Misc. 3d 1228A, 911 N.Y.S.2d 691 (Civ. Ct. Kings Co. Silvia Ash, J. May 25, 2010). There is no provision of the No Fault Regulations which allow a claimant or insurance company to ignore a verification request or response. In fact, there is ample case law which provides that neither party may ignore communications from the other without risking its chance to prevail in the matter *Media Neurology, P.C. v. Countrywide Ins. Co.*, 21 Misc. 3d 1101(A); *Westchester County Medical Center v. NY Central Mutual Fire Ins. Co.*, 262 AD2d 553.

These are my findings:

In this matter wherein unanswered verification is in issue, it is very clear that the Applicant filed prematurely.

The date of service was 4/13/22.

The verification requests were made by Respondent on 5/31/22, and 7/5/22.

The Applicant responded on 9/23/22.

However, the filing with AAA had been made by Applicant, on 7/26/22, prior to when the response for verification was made.

Therefore issue was not joined as the Respondent did not act on the verification response and accordingly, the matter must be dismissed without prejudice until a decision is made by the Respondent.

That is my decision.

Therefore this Respondent was unable to process this claim

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 NJ

SS :

County of Ocean

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

12/29/2023
(Dated)

Felix Papadakis

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:
c12ae66b44a61a65289f66048c6992ad

Electronically Signed

Your name: Felix Papadakis
Signed on: 12/29/2023