

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Island Ambulatory Surgery Center LLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1322-5180

Applicant's File No. 00121601

Insurer's Claim File No. 1126847-02

NAIC No. 16616

ARBITRATION AWARD

I, Joanne Andreotta, 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 02/29/2024
Declared closed by the arbitrator on 02/29/2024

Justin Rosenbaum from Drachman Katz, LLP participated virtually for the Applicant

Adam Waknine from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$980.10**, 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 issue in dispute is whether the bills for date of service of 5/19/23 was properly denied based upon the EUO testimony of the patient/EIP. At the hearing, there were no fee schedule arguments presented.

The case involves cervical epidural steroid injections performed on the patient, a 50-year-old male, who was purportedly injured in an automobile accident on 3/11/23. I deem that the Applicant has established a prima facie case of entitlement to

reimbursement herein based upon the submissions and that the burden shifts to the Respondent to establish its defense to the claim based upon the EUO testimony of the patient/EIP.

4. Findings, Conclusions, and Basis Therefor

This matter falls under the First Amendment to Regulation 68D and, as such, only the documents submitted by the Applicant at the time of filing and by the Respondent during the conciliation will be considered. Therefore, all documents contained in the ADR at the time of the Hearing have been considered.

EUO Denial

The pertinent denial states that: *"Entire claim is denied based on Examination under oath held on 5/22/2023. All claims are being denied based on the results of AMERICAN TRANSIT INSURANCE COMPANY's investigation of the claim. AMERICAN TRANSIT INSURANCE COMPANY has a founded belief that the motor vehicle accident did not cause the alleged injuries and that the claimant is exaggerating the injuries in an opportunistic fashion."*

Applicant argued that the denial was vague and therefore insufficient. I agree with the Applicant. Merely stating that the entire claim was denied "based upon the examination under oath" is vague and lacks the relevant degree of specificity required by law.

Case law establishes that a denial of claim form setting forth "this claim is denied based on an examination under oath" is invalid as lacking a sufficiently detailed factual basis; such a basis for denial is too vague and ambiguous to alert the claimant as to the actual grounds. ***Mega Supply & Billing, Inc. v. American Transit Ins. Co.***, 9 Misc.3d 1116(A), 808 N.Y.S.2d 918 (Table), 2005 N.Y. Slip Op. 51569(U), 2005 WL 2432384 (Civ. Ct. Kings Co., Eileen Nadelson, J., Oct. 3, 2005).

The Courts have held in the cases of ***Mount Sinai Hospital v. Triboro Coach***, 263 A.D.2d 11, 19-20 (2nd Dept., 1999) and ***V.S. Medical Services, P.C. v. Allstate Ins. Co.***, 25 Misc.3d 39, 889 N.Y.S.2d 360, 2009 N.Y. Slip Op. 9310 (N.Y. Sup. App. Term July 20, 2009) that the Respondent must show by a preponderance of the evidence that the accident was not an insured event. It is Respondent's burden to prove the fact or evidentiary foundation for a belief that the collision was not an insured incident". See, ***Mount Sinai Hosp. v. Triboro Coach***, 263 A.D.2d 11 (1999).

Many other Arbitrators have evaluated this issue as it relates to a denial which merely states that the claim is denied on the basis of an EUO and have ruled that the denial is vague and therefore insufficient to sustain the Respondent's defense. See, e.g. Aron Rovner v. American Transit, 17-16-1036-4046 (Arbitrator Toksoy); Medical Diagnostic Services v. American Transit, 17-16-1040-6142(Arbitrator Adler); Longwood Acupuncture v. American Transit, 17-16-1037-4351(Arbitrator Rickman)(denial is vague and it is not the function of the Arbitrator "as a neutral to read the EUO transcript and mount a belated defense by speculating the specific reasons why Respondent denied the claim"); Comprehensive MRI v. American Transit, 17-16-1039-0209(Arbitrator Gloumis)(a denial which states that the "claim is denied based on an examination under oath is invalid as lacking a sufficiently detailed factual basis; such a basis for denial is too vague and ambiguous to alert the claimant as to the actual ground").

Denial Based Upon EUO Testimony

In this case, moreover, even if the denial contained the requisite degree of specificity, there is insufficient proof in the record before me to establish "fraud", that the services were not performed or any other defense that would prevent recovery.

The only "proof" of this defense offered by the Respondent is the EUO testimony of patient who testified as to his employment, address, the facts of the accident and his treatment.

I have reviewed that transcript in great detail. I also considered the arguments of Respondent's counsel with regard to the "inconsistencies" in the EUO transcript.

Although there are clearly several inconsistencies in the EUO transcript with regard to the various questions, they are not enough to establish this vague defense.

Unsubstantiated hypotheses and suppositions are insufficient to raise a triable issue of fraud. Ocean Acupuncture, P.C. v. State Farm Mutual Automobile Ins. Co., 23 Misc.3d 1104(A).

The Respondent has failed to sustain its burden of proof with regard to denials pertaining to the EUO testimony. At the outset, the denial is vague. Even if the denial/EOB was sufficient, the Respondent has not established fraud herein and has clearly not established that the services were not performed.

As a result, I find in favor of the Applicant.

Notably, I had previously ruled in favor of the Applicant in the linked matter of **Konstantino Tsoubris v. American Transit**, 17-23-1317-9444.

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
	Island Ambulatory Surgery Center LLC	05/19/23 - 05/19/23	\$980.10	Awarded: \$980.10
Total			\$980.10	Awarded: \$980.10

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/23/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date set forth above at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

The Applicant's attorney is entitled to one attorney fee in accordance with 11 NYCRR 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 Suffolk

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

02/29/2024
(Dated)

Joanne Andreotta

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:
06e4c00d872446e64a5bbc192581b1c8

Electronically Signed

Your name: Joanne Andreotta
Signed on: 02/29/2024