

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

United Pharmacy NYC Inc.
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-23-1326-9465

Applicant's File No. 23-0359 &
23-0573

Insurer's Claim File No. 694489

NAIC No. Self-Insured

ARBITRATION AWARD

I, Fred Lutzen, 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: IP or "Assignor"

1. Hearing(s) held on 07/09/2024
Declared closed by the arbitrator on 07/09/2024

Anna Bangiyev, Esq., from The Bangiyev Law Firm PLLC participated virtually for the Applicant

Frank D'Esposito, Esq., from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,888.84**, 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

This male IP/Assignor (first initial "V") was 22-years-old when he was injured as a passenger in an automobile accident on 3/26/2023. He subsequently prescribed and provided Baclofen tablets and Lidocaine 5% ointment on 7/25/2023 and 8/29/2023. Applicant seeks reimbursement of \$2,888.84 for dispensing these medications.

Respondent asserts the bills were not received until arbitration was commenced, along with receiving the AR-1, and that Applicant did not establish prima facie entitlement to benefits prior to commencing arbitration. Respondent subsequently raises a benefit exhaustion defense.

The issues presented are (1) whether Respondent established the statutory \$50,000.00 in no-fault benefits has been exhausted and no benefits are available and, if not (2) whether Applicant established prima facie entitlement to benefits, and (3) whether the charges are within fee schedule allowances.

4. Findings, Conclusions, and Basis Therefor

This case was decided based on prevailing law, the submissions of the parties as contained in the electronic file [MODRIA] maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no live witnesses.

Unless the parties' agreement provides otherwise, an arbitrator need not apply the rules of evidence, is not bound by principles of substantive law, may do justice as he sees it, and may apply his own sense of law and equity to the facts as he finds them to be. Matter of New Century Acupuncture, P.C. v. Country Wide Ins. Co., 48 Misc.3d 1201(A), 18 N.Y.S.3d 580 (Table), 2015 N.Y. Slip Op. 50919(U) at 2, 2015 WL 3821534 (Dist. Ct. Suffolk Co., C. Stephen Hackeling, J., June 18, 2015); see also, *Rules for Arbitration of No-Fault Disputes in the State of New York*; Effective August 16, 2013, [p](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." <https://nysinsurance.adr.org>.

Benefit Exhaustion Defense

On 6/3/2024, Respondent issued a general denial asserting that the "maximum No Fault Benefit of \$50,000 has been exhausted. Therefore, all further claims will be denied."

In support of its defense that the maximum available aggregate no-fault coverage limit has been exhausted, Respondent submitted the following:

1. A copy of the payment ledger sheet which establishes 'PIP' payments totaling \$50,000.00.
2. Given this is a claim covered by MVAIC, the statutory limit of \$50,000.00 was available for no-fault claims.

The total benefit afforded was \$50,000.00.

"MVAIC is a statutory creation designed to provide no-fault benefits to injured individuals only when there is no other insurance available. *Akita Med. Acupuncture, P.C. v. MVAIC*, 14 Misc 3d 405, 407 (Dist. Ct., Nass Co. 2006). Pursuant to Article 52, MVAIC becomes the insurer ... *Mtr of Osorio v Motor Veh. Acc. Indem. Corp.*, 112 AD3d 831, 832 (2d Dept 2013)." *MB Advanced Equipment, Inc. v. MVAIC*, 48 Misc.3d 1049, 1050 n 2, 15 N.Y.S.3d 554, 557 n 2 (Civ. Ct. Kings Co. 2015)."

As such, Respondent has established the full amount available under this MVAIC policy has been paid. When an insurer has paid the full limit available under the policy, its duties under the contract of insurance terminate. Hospital for Joint Diseases v. State Farm Mutual Automobile Ins. Co., 8 A.D.3d 533, 779 N.Y.S.2d 534 (2d Dept. 2004).

The preponderance of credible evidence demonstrates that total aggregate available benefits have been exhausted.

A No-Fault insurer may pay uncontested claims and satisfy arbitration awards, such that if by the time the former claim is litigated, the governing policy's coverage limits have been exhausted the insurer may assert that fact as a defense. Harmonic Physical Therapy, P.C. v. Praetorian Ins. Co., 47 Misc.3d 137(A), 15 N.Y.S.3d 711 (Table), 2015 N.Y. Slip Op. 50525(U), 2015 WL 1649002 (App. Term 1st Dept. Apr. 14, 2015).

I find that the First Department decision in Harmonic, *supra*, correctly interpreted the law. Respondent was not precluded by 11 NYCRR §65-3.15 from paying other providers' legitimate claims. Adopting another position would require defendant to delay payment on other uncontested claims pending resolution of plaintiff's disputed claim and "runs counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims." Nyack Hosp. v General Motors Accept. Corp., 8 NY3d at 300.

Moreover, an arbitration award from this forum may be vacated upon the ground that the arbitrator exceeded his or her authority by making an award more than the limits fixed by the insurance policy. Matter of Spears v. New York City Trans. Auth., 262 A.D.2d 493, 494 (App. Div., 2d Dept. 1999). Alleviation Medical Services, P.C., *supra*, did not address the limited powers of an arbitrator.

Unlike the courts, which have equitable powers derived from the State Constitution, this forum's powers are derived from statutes and regulations. *See*, Matter of Merrick Union Free School District v. Merrick Faculty Association, Inc., 87 A.D.3d 536, 540 (App. Div., 2d Dept. 2011) ("Relief granted by an arbitrator cannot exceed a specifically enumerated limitation on his or her power.").

In this case, Applicant contends that the bills were submitted by fax on 8/18/2023 and 9/15/2023, respectively, to fax # 646-836-6738, as evidenced by the fax transmittal documents. Respondent's counsel argued that this is not a fax number for Respondent as evidenced on the verification request letters that were sent to the IP/Assignor and counsel before this date of service. The fax number is 212-732-1826.

It is unclear how it was determined that this fax number 646-836-6738 was associated with MVAIC and there is no evidence in MODRIA showing any connection of this number to MVAIC.

In any event, assuming Applicant established a prima facie case, the matter would still be premature for determination in arbitration. Applicant contends it never received any

payment, denial, or request for additional verification after it allegedly faxed this bills to Respondent. Applicant then commenced arbitration on 11/28/2023.

An Applicant/provider must deal in good faith and cooperate with the insurer if it wants to get paid." Dilon Medical Supply Corp. v. Travelers Ins. Co., 7 Misc.3d 927, 930 (Civ. Ct. Kings Co. 2005).

"There are built-in timelines to the no-fault claims process. To fulfill the intent of the no-fault statute and the insurance regulations, claimants, providers and carriers must each act in good faith to address each claim in an expeditious manner." Five Boro Psychological and Licensed Master Social Work Services, PLLC v. GEICO General Ins. Co., 38 Misc.3d 354, 357 (Civ. Ct. Kings Co. 2012).

11 NYCRR 65-4(b)(1). *Initiation of Arbitration*, states:

(i) An applicant for benefits may initiate arbitration proceedings by mailing **a copy of the denial of claim form** prescribed by section 65-3.4(c)(11) of this Part, upon which the applicant has entered the reason(s) for contesting the denial, together with a detailed listing and calculation of all incurred expenses in dispute, indicating the dates upon which the claims for incurred expenses were submitted to the insurer, to the address designated on the denial of claim form.

(v) In the **absence of a denial of claim form**, a dispute shall be considered arbitrable if the claim is overdue as described in section 65-3.8(a)(1) of this Part and a **demonstrable attempt** was made by the applicant to obtain payment or an explanation from the insurer of the continued nonpayment of the claim.

The interpretation of the Insurance Superintendent, if not irrational or unreasonable, will be upheld in deference to his special competence and expertise with respect to the insurance industry, unless it runs counter to the clear wording of a statutory provision. State Farm Mutual Automobile Ins. Co. v. Mallela, 4 N.Y.3d 313, 321 (2005).

Since no denial was issued and Applicant's position is that it never received anything from Respondent after allegedly submitting the bill by fax, this matter would not be ripe for determination. Pursuant to the Regulations, Applicant must make some attempt to find out why the claim was not paid before commencing arbitration.

However, in this case, Respondent has demonstrated that the benefits have been exhausted.

Conclusion

Having carefully considered the submissions of the parties, the relevant case law, and the arguments of respective counsel, I conclude that the preponderance of the credible evidence supports a finding in favor of Respondent.

The exhaustion defense is sustained.

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 DENIED in its entirety

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

State of NY

SS :

County of Onondaga

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

07/10/2024
(Dated)

Fred Lutzen

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:
d0c2202890127eb6c08242d58bfa9612

Electronically Signed

Your name: Fred Lutzen
Signed on: 07/10/2024