

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kings Anesthesia
(Applicant)

- and -

Allstate Property and Casualty Insurance
Company
(Respondent)

AAA Case No. 17-23-1325-8729

Applicant's File No. SSA23-110947

Insurer's Claim File No. 0686705807
2CG

NAIC No. 17230

ARBITRATION AWARD

I, Anne Malone, 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 07/15/2024
Declared closed by the arbitrator on 07/15/2024

Steven Super, Esq. from Super Associates P.C. participated virtually for the Applicant

James McNamara, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,430.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$207.97 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

The 60 year old EIP reported involvement in a motor vehicle accident on September 14, 2022; claimed related injury and underwent anesthesia services provided by the applicant on October 10, 2023.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based on the IME of the EIP by Lawrence Barr, D.O. which was performed on March 15, 2023. The IME cut-off was effective on April 14, 2023.

However, at the hearing the respondent asserted a jurisdictional defense. The respondent contends that it did not provide New York no-fault coverage for the vehicle involved in this accident on the date of this loss and that the applicant has no standing to bring this action in New York.

The issues to be determined at the hearing are:

Whether the applicant has standing to bring this action in this forum in New York.

Whether the respondent established that the medical services provided by the applicant were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Jurisdiction/Venue/Standing

The respondent contends that New York is not the proper venue for the claim at issue because it involves an accident which occurred in New Jersey involving a New Jersey resident, who was treated by the applicant in New Jersey insured under a New Jersey policy. Therefore, the respondent argued that the arbitration of this matter has been filed in the incorrect venue.

The NF-3 lists the EIP's address as 1641 3rd Ave. Apt 35G, New York, NY 10128 and confirms that the treatment was rendered by a provider in New Jersey and that the accident occurred on East I-78, Newark N.J.

However, the NF2, which appears to be filled out and signed by the EIP states that her address at the time of the accident was 3207 Avery Ct., Somerset, NJ 08873.

Conflicts relating to an insurance policy must be resolved by application of the conflict of law rules relevant to contracts. See Matter of Integon Insurance Co. v Garcia, 281 A.D.2d 480 (2d Dept. 2001). The courts apply the "center of gravity"

or "grouping of contacts" inquiry to determine which State has the most significant contacts to the dispute. See Matter of Eagle Insurance Co. v Singletary, 279 A.D.2d 56 (2d Dept. 2000.)

In a case involving a contract, contacts to be examined are the place of contracting; the place of negotiation and performance; the location of the subject matter of the contract; and the domicile or place of business of the contracting parties. See Zurich Insurance Co. v Shearson Lehman Hutton, Inc., 84 N.Y.2d 309, (N.Y. 1994.)

Finally, the appellate courts have held that; "[w]here an action is one involving the rights and duties of the parties to an automobile contract, the law of the State where the policy was written, as evidence by the parties' understanding as to the principal location of the insured risk, would be controlling, irrespective of the fact that the accident occurred in another State." Gov't Employees Ins. Co. v. Sheerin, 65 A.D.2d 10 (2d Dept. 1978.)

The pertinent facts of the claim at issue are not in dispute. The applicant is seeking first-party New York no-fault benefits under a New Jersey automobile insurance policy which was written in New Jersey related to a New Jersey resident and a New Jersey accident.

New Jersey Family Automobile Insurance Policy, NJ Statutes and regulations which states in pertinent part: "all medical disputes must be submitted to NJ Arbitration. Such dispute resolution is governed by N.J.S.A. 39:6a-5.1 et. seq. and N.J.A.C. 11:3-5.1 et. seq. and Administrative rules apply to disputes arising under contracts affected by the provisions of the 1991 New Jersey 'Automobile Insurance Cost Reduction Act,' specifically, to claims under policies issued or renewed on or after March 22, 1999, and any voluntary submission by the parties pursuant to N.J.S.A. 39:6A-9.1 and 39:6A-11."

At the hearing, the applicant argued that there were other claims involving the same EIP and respondent based on a lack of medical necessity and the jurisdictional issue was not raised.

However, since the jurisdictional issue has been raised at this hearing, I am compelled to review the submission of the proofs presented and to make a determination regarding the coverage issue.

After a review of the evidence submitted, I find that this forum is not the proper venue for resolution of this dispute and that the applicant does not have standing to bring this action in New York.

Under these circumstances, the issue of medical necessity need not be determined at this time.

Accordingly, the claim is dismissed without prejudice to allow for the action to be brought in the proper venue.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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 CT

SS :

County of Fairfield

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

07/19/2024

(Dated)

Anne Malone

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:
bbe046774e06587bdcab473a1c244994

Electronically Signed

Your name: Anne Malone
Signed on: 07/19/2024