American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Healthcare Partners (Applicant)	AAA Case No.	17-24-1333-8682
	Applicant's File No.	3165040
- and -	Insurer's Claim File No.	0683698517-02
	NAIC No.	29688
Allstate Fire & Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Natia Pavel, 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 (MA)

1. Hearing(s) held on 07/08/2024
   Declared closed by the arbitrator on 07/08/2024

   Justin Skaferowsky Esq., from Israel Purdy, LLP participated virtually for the Applicant

   Christina McGreevy Esq., from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,375.72**, 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

   Applicant is seeking reimbursement in the amended sum $1,375.72 representing physical therapy services that were rendered to the EIP (MA) on 2/7/23-6/12/23. The EIP was injured as a result of a motor vehicle accident that occurred on 9/4/22. The Applicant timely submitted this claim to the carrier seeking reimbursement. The carrier timely made verification requests and later denied the claim based on the fact that the policy is exhausted. The parties agreed that the issue in this matter is whether the carrier has met its burden demonstrating that the policy limits have been exhausted.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

Applicant is seeking reimbursement in the amended sum $1,375.72 representing physical therapy services that were rendered to the EIP (MA) on 2/7/23-6/12/23. The EIP was injured as a result of a motor vehicle accident that occurred on 9/4/22. The Applicant timely submitted this claim to the carrier seeking reimbursement. The carrier timely made verification requests and later denied the claim based on the fact that the policy is exhausted. The parties agreed that the issue in this matter is whether the carrier has met its burden demonstrating that the policy limits have been exhausted.

Applicant argued that the requested verifications were provided to the carrier on 8/11/23 and payment was not made within 30 days of receipt of the verifications. Applicant argued that the claim was due for payment on or before 9/16/23, before the policy became exhausted.

Applicant establishes a prima facie entitlement to payment by proving that it submitted a claim, set forth the facts and the amount of the loss sustained, and that payment of no-fault benefits is overdue (see Insurance Law § 5106[a]; Viviane Etienne Med. Care v Country-Wide Ins. Co., 25 NY3d 498, 501 (2015); Countrywide Ins. Co. v. 563 Grand Medical PC 50 A.D. 3d. 313 (1 Dep't, 2008); Sunshine Imaging Assoc./WNY MRI v. Geico. Ins. Co., 66 A.D. 3d. 1419 (4 Dep't, 2009). A facially valid claim is presented when it sets forth the name of the patient, date of accident, the date of the services, a description of the services rendered and the charges for those services. See Vinings Spinal Diagnostic PC v. Liberty Mutual Insurance Company, 186 Misc. 2d 287 (1 Dist. Ct. Nass. Co.1996).

Following the accident, the injured party started on a course of conservative treatment. Applicant has submitted copies of the response to the requests for additional verification. The proof of mailing indicates that the all responses were mailed on 8/11/23. Applicant argues that payment was overdue as of 9/16/23.

11 NYCRR 65-3.8 (a)(1) states: Payment or denial of claim, no fault benefits are overdue if not paid within 30 calendar days after the insurer receives a proof of claim, which shall include verification of all of the relevant information requested pursuant to section 65 - 3.5 of the subpart. The burden of proving that written proof of the claim was timely submitted to the carrier is upon the Applicant. This is part of the Applicant's prima facie case. see Mary Immaculate Hosp. v Allstate Ins. Co., 5 A.D.3d 742 [2004]; Amaze Med. Supply v Eagle Ins. Co., 2 Misc. 3d 128(A), 2003 NY Slip Op 51701(U) (Sup. Ct. App Div. 2d Dep't 2003). To establish that the Applicant mailed the billing to the Respondent, it must conclusively show it submitted its claim form to the Respondent. See A.B. Med. Servs. v State Farm Mut. Auto. Ins. Co., 3 Misc. 3d 130(A), 2004 NY Slip Op 50387(U), (App Term, 2d & 11th Jud Dists). Respondent argues that it was seeking additional verification but applicant argues that it provided a response and that payment is overdue.

At the hearing, the Respondent's attorney asserted that the policy is now exhausted. The payment ledger indicated that $75,189.00 was paid. A defense of no coverage due to the exhaustion of a No-Fault insurance policy's limit may be asserted by an insurer despite its failure to issue an NF-10 denial of claim forms within the requisite 30 day period, see New York & Presby. Hosp. v. Allstate Ins. Co., 12 A.D.3d 579, 580 (2 Dept.2004); Flushing Traditional Acupuncture, P.C. v. Infinity Group, 38 Misc.3d 21, 2012 N.Y. Slip Op. 22345 (App. Term 2nd, 11th and 13th Jud. Dists. 2012); Crossbridge Diagnostic Radiology v. Encompass Ins., 24 Misc.3d 134(A), 2009 N.Y. Slip Op. 51415(U) (App. Term App. Term 2nd, 11th and 13th Jud. Dists. 2009).

An arbitrator's award directing payment in excess of the limits of an insurance policy exceeds the arbitrator's power and constitutes grounds for vacatur of the award, see Matter of Brijmohan v. State Farm Ins. Co., 92 N.Y.2d 821, 822 (1998); Countrywide Insurance Company v. Sawh, 272 A.D.2d 245 (1st Dept. 2000); Matter of DTR Country-Wide Ins. Co. v. Refill RX Pharmacy, 212 A.D.3d 481(1st Dept. 2023). Therefore, I find the matter is dismissed.

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 Nassau

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

08/06/2024
(Dated)

Natia Pavel

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:
202ad939d21f4e227ab81bff976d7217

Electronically Signed

Your name: Natia Pavel
Signed on: 08/06/2024