

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Corning Ambulance Service Inc
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1327-7847

Applicant's File No. SSA23-111015

Insurer's Claim File No. 000978956138

NAIC No. 29688

ARBITRATION AWARD

I, Eileen Casey, 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 07/18/2024
Declared closed by the arbitrator on 07/18/2024

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

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

2. The amount claimed in the Arbitration Request, **\$1,458.06**, 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 EIP (MP), a 19-year-old male, was the driver of a motor vehicle involved in an accident on August 8, 2023. The amount claimed is \$1,458.06 for ambulance services provided on August 8, 2023. Respondent denied Applicant's claim for failure to comply with the written notice requirement. The issue is whether Respondent established a defense based on the failure to provide timely written notice of claim.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon oral arguments and a review of the documents contained in the ADR Center maintained by the American Arbitration Association. The amount claimed is \$1,458.06 for ambulance services provided on August 8, 2023.

Applicant's Prima Face Case

The evidence demonstrates that the EIP (MP), a 19-year-old male, was the driver of a motor vehicle involved in an accident on August 8, 2023.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits was overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Ifind that Applicant established a prima case for reimbursement.

Failure to Give Timely Written Notice

Respondent denied Applicant's claim for failure to comply with the written notice requirement. The Explanation of Medical Bill Payment states that notice must be given as soon as reasonably practicable, but in no event more than 30 days after the accident date, unless the eligible injured person submits written proof providing clear and reasonable justification for failure to comply with such time limitation.

11 NYCRR § 65-1.1 requires that in the event of an accident written notice setting forth details sufficient to identify the eligible injured person along with reasonably obtainable information regarding the time, place, and circumstances of the accident must be given to the carrier no more than thirty (30) days after the date of the accident by or on behalf of each eligible injured person. An eligible injured person may submit written proof providing clear and reasonable justification for the failure to comply with such time limitation if notice is not timely given to the insurance carrier.

The NF-10 states that the claim was received by Respondent on August 24, 2023 and the denial was issued on October 5, 2023.

Applicant's counsel contended that the denial was late and therefore Respondent was precluded from asserting a lack of timely written notice defense. Respondent's counsel contended that an untimely denial does not preclude Respondent from asserting a lack of timely written notice defense.

It is accepted that once presented, a claim for health care benefits must be paid or denied within (30) thirty days of an insurer's receipt thereof. This period may be tolled by requesting additional verification, as provided by 11 NYCRR Section 65-3.8 (a) (1). The insurer must make the verification request within fifteen (15) business days from its

receipt of the claim, pursuant to 11 NYCRR Section 65-3.5. If a response to the initial request for additional verification is not received by the carrier within thirty (30) days, then, within ten (10) calendar days after the thirty-day period, the carrier must make a second request. See, 11 NYCRR Section 65 3.6.

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the ground that plaintiff untimely submitted its claim if such defense is not raised in a timely denial of claim form. See generally, *New York and Presbyterian Hospital v. Empire Ins. Co.*, 286 A.D.2d 322 (2nd Dept. 2001); *St. Clare's Hospital v. All City Ins. Co.*, 201 A.D.2d 718 (2nd Dept. 1994). If Respondent has preserved such defense in a timely denial of claim form, Respondent will still be precluded from proffering such defense as a matter of law unless Respondent advised the Applicant that "late notice will be excused where the Applicant can provide reasonable justification of the failure to give timely notice." See generally, 11 N.Y.C.R.R.65-3.3(e); See also, *Radiology Today, P.C. v. Citiwide Auto Leasing, Inc.*, 2007 N.Y. Slip Op. 27111 (App. Term 2nd and 11th Jud. Dists. 2007); *SZ Medical, P.C. v. Country-Wide Ins. Co.*, 12 Misc.3d 52 (App. Term 2nd and 11th Jud. Dists. 2006).

Findings

Based on the foregoing, I find that Respondent did not preserve the defense of lack of timely written notice in a timely denial. Therefore, Respondent is precluded from raising this defense. Accordingly, Applicant's claim is granted in its entirety.

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
	Corning Ambulance Service Inc	08/08/23 - 08/08/23	\$1,458.06	Awarded: \$1,458.06
Total			\$1,458.06	Awarded: \$1,458.06

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/06/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from the above date, which is the date that arbitration was requested, 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

Respondent shall pay Applicant an attorney's fee, in accordance with 11 NYCRR § 65-4.6(d). Therefore, the insurer shall pay the applicant an attorney's fee of 20% of benefits plus interest, with no minimum fee and a maximum fee of \$1,360. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 Queens

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

08/18/2024
(Dated)

Eileen Casey

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:
3145c2488c630700445bea346fd15e31

Electronically Signed

Your name: Eileen Casey
Signed on: 08/18/2024