

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC  
(Applicant)

- and -

MTA Bus Company  
(Respondent)

AAA Case No. 17-24-1335-6041

Applicant's File No. AR24-23418

Insurer's Claim File No. 23-0068346-001

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Alana Barran, 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 07/30/2024  
Declared closed by the arbitrator on 08/02/2024

Alek Beynenson from The Beynenson Law Firm, PC participated virtually for the Applicant

Laura Weiss from Foley, Smit, O'Boyle & Weisman participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,467.39**, 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 patient, YEUH, was a male that was a rider of a scooter involved in an accident on 1/9/2023 with a bus. This is a claim for office visit and physical therapy performed on 1/17/2023 through 6/27/2023. The respondent a denial stating that "based on failure of the injured person to return additional verification requested on 4/25/2023, 5/30/2023, 6/30/2023 the injured personal has failed to qualify for no-fault benefits," and argues that the patient has not qualified for no-fault coverage. The issue raised is whether the Respondent has sustained its defense that the patient has not qualified for no-fault coverage, that is, that no-fault coverage has not been triggered.

#### 4. Findings, Conclusions, and Basis Therefor

My decision is based on the arguments of the representatives for both parties and those documents contained in the ADR Center for this case. No fee schedule issues were raised related to the amount in dispute.

The Respondent issued a general NF10 dated 8/31/2023 stating that "An insurer may issue a denial if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply, provided that the verification request so advised the applicant as required in section 65-3.5(o) of this Subpart. **BASED ON FAILURE OF THE INJURED PERSON TO RETURN ADDITIONAL VERIFICATION REQUESTED ON 4/25/2023, 5/30/2023 and 6/30/2023, THE INJURED PERSONAL HAS FAILED TO QUALIFY FOR NO-FAULT BENEFITS.**" The Respondent issued specific explanations of review stating that the bill is "delayed pending receipt of verification from the injured person, i.e. the class of scooter operated by the claimant on the date of loss;" and an NF10 stating that "claim is denied because the injured person has not qualified for no-fault benefits due to his failure to return additional verification re the class of scooter operated on the date of the accident."

The Respondent argues that the patient failed to provide the "class of scooter" operated by the patient YEUH at the time of the accident required to qualify the patient for no-fault coverage and relies on several email exchanges with the patient's attorney. Respondent's brief notes that "The driver of the motorized scooter may be a person covered under the no-fault law. The issue depends on how the scooter is classified by the DMV. If the scooter cannot travel over 20 MPH, it would be classified as a "Class C" limited use motorcycle with the DMV. In that case, the rider is considered a pedestrian and a "covered person," under the no-fault statute. If the scooter is a Class A (can go over 30 MPH), or Class B (can go over 20 MPH), you may not be considered eligible for no-fault." The Applicant argues that the bill was received by the Respondent, that there is no request to the provider, that the denial is untimely issued, and that the claim is due.

The Respondent notes in its brief that "Simply stated, the only way NYCT (a self-insurer) becomes obligated to provide no-fault coverage and hence comply with the Regulations (including its timeframes), is when a passenger or pedestrian who is injured as a result of the use or operation of one of its buses, provides written notice of claim (e.g. an NF-2), not proof of claim (e.g. a bill). It is not until notice is provided, that compliance with the No-Fault Regulations is required. It is incumbent upon the injured party to provide notice, in order to impose the statutory obligation to provide no-fault coverage upon Respondent."

The Respondent further notes in its brief that "In noting the distinction between insurers and self-insurers for purposes of determining liability to impose coverage,

before no-fault coverage can be imposed upon self-insurers, the injured person must:

- demonstrate that they were either a pedestrian or passenger injured as a result of the use or operation of a self-insured vehicle;
- that they are not covered by a household policy;
- provide written notice within 30 days of the incident causing injuries; and
- that the notice sets forth sufficient details to allow the self-insurer to identify the individual seeking benefits, the vehicle involved and the circumstances of the incident giving rise to the injuries sustained.

Additionally, as is the issue in this specific case, if the claimant was operating a "motorcycle" as defined by the Vehicle & Traffic Law (VTL), coverage is unavailable from Respondent, who is self-insured... Similarly, and for the same reasons, compliance with the technical requirements of the no-fault law are preconditions for coverage to an EIP thereunder. Accordingly, a EIP's failure to tender sufficient written notice to an insurer within 30 days generally warrants a denial of coverage... In addition, an insurer who demonstrates that despite proper requests for verification necessary to determine no-fault "coverage," when the requests remain unanswered for more than 120 days, the insurer may subsequently issue a denial of claim. To be sure, 11 NYCRR 65-3.5(o) states that [a]n applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. The insurer shall advise the applicant in the verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply..."

The Respondent argues in its brief that "It stands to reason that if no coverage exists for the claimant under the statutory no-fault provisions, then the insurer should not be precluded from raising that defense when a claimant or its assignor, seek reimbursement thereunder. The policy consideration mirrors that for cases involving disclaimers of coverage., namely the burdening of insurers with paying for uncovered claims. Therefore, where there is an issue of fact regarding the existence of insurance coverage, the insurer is not barred from disclaiming coverage beyond the 30-day timeframe in which a denial must ordinarily be issued... Inasmuch the claimant is not eligible for no-fault benefits from Respondent (having failed to demonstrated compliance with the insurance law and no-fault regulations promulgated thereunder (11 NYCRR §65-2.4)), it is respectfully requested that Applicant's claim be denied in its entirety, as any award would create coverage where none existed in the first place."

As noted by Respondent, "unlike common insurers who issue policies and provide coverage prior to the occurrence of an incident, Respondent is a public authority created as a public benefit corporation under the laws of the State of New York. The Transit Authority does not issue insurance policies; rather it selfinsures the buses with which it provides its essential service. Applicant's assignor herein was a passenger on a Transit Authority bus, and the Transit Authority's liability - or lack thereof - is established by and through Insurance Law § 5103(a)(1), and the regulation promulgated thereunder, 11 N.Y.C.R.R. § 65-2.3(g). No-fault benefits

with the Transit Authority arise from a statutory basis if a party is injured as a result of the use or operation of a Transit Authority vehicle and they are not covered by a household policy." The respondent cites to:

Insurance Law § 5103(a)(1), specifically excludes occupants of a bus who are covered by a "household" insurance policy from those to whom the insurer of a vehicle involved in an accident must provide No-Fault benefits. The text of Ins. L. 5013(a)(1) provides as follows: In the case of occupants of a bus other than operators, owners, and employees of the owner or operator of the bus, the coverage for first party benefits shall be afforded under the policy or policies, if any, providing first party benefits to the injured person and members of his household for loss arising out of the use or operation of any motor vehicle of such household. In the event there is no such policy, first party benefits shall be provided by the insurer of such bus.

11 NYCRR 65-2.2 defines the obligations of self-insurers regarding the provision of No-Fault benefits. 11 NYCRR 65-2.2 (j), which defines an eligible injured person, states that such definition is "[s]ubject to the exclusions and conditions set forth below..." Said exclusions are set forth in 11 NYCRR 65-2.3, which provides in pertinent part, that "[t]he requirement for payment by a self-insurer of first-party benefits does not apply to personal injury sustained by: ...any person in New York State while occupying the self-insured motor vehicle which is a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, but only if such person is a named insured or relative under any policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act... 11 NYCRR 65-2.3(g).

Here, following a complete review of the evidence presented, I find that Respondent has established that the patient YEUH has not yet qualified for no-fault coverage which may be available from Respondent, New York City Transit Authority to the patient YEUH as a result of the 1/9/2023 motor vehicle accident. The Respondent's argues that the failure to provide notice of claim, a condition precedent, warrants a lack of coverage defense where no arguments related to the NF2 were raised at the hearing. Nevertheless, should Respondent require an NF2 from the patient here it would be for qualification for no-fault benefits. As such, I find that the Respondent's denial based on the 120-day rule is invalid since the patient YEUH, as admitted in the denial, has not qualified for no-fault benefits from the Respondent. The Respondent also admitted that lack of coverage has not been established as duly noted by the Respondent that "...if the claimant was operating a "motorcycle" as defined by the Vehicle & Traffic Law (VTL), coverage is unavailable from Respondent, who is self-insured..."

Here, I am not persuaded by the Respondent's argument that its denial based on the 120-day rule is valid where the Respondent admittedly would provide coverage "If

the scooter cannot travel over 20 MPH, it would be classified as a "Class C" limited use motorcycle with the DMV. In that case, the rider is considered a pedestrian and a "covered person," under the no-fault statute." However, I am persuaded by the Respondent's explanation of benefits that the patient YEUH has not yet qualified for no-fault benefits from the Respondent. Therefore, based on the credible relevant evidence presented here, I find that the Respondent's denial is found to be invalid and vacated, and the claim is dismissed without prejudice for a determination on whether the patient YEUH is an eligible injured person for no-fault coverage by the Respondent.

A lack of coverage defense may be raised without regard to any issue as to the propriety or timeliness of an insurer's denial of claim form. See *Zappone v Home Ins. Co.*, 55 NY2d 131, 135-136 (1982)(lack of coverage defense is not precluded); see also *Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195 (1997); *Active Care Med. Supply Corp. v Hartford Ins. Co.*, 61 Misc.3d 139(A) (Appellate Term, Second Dept. 2018).

Respondent NYCTA is a self-insurer maintaining a form of financial security other than an owners' automobile insurance policy. There is no insurance policy issued by Respondent that creates a contractual relationship between the Respondent and the Applicant or the Assignor. As such, the NYCTA's obligation to provide No-Fault coverage to the Applicant's assignor "would not exist but for a statute." *Aetna Life & Cas. Co., v. Nelson* , 67 N.Y. 2d 169, 174 (1986).

The Applicant relies on the decision by Arb. Tali Philipson in AAA Case No.: 17-23-1309-1527 (3/6/2024). I find said decision to be distinguishable from this matter as Arb. Philipson clearly noted that in that case the "Respondent has not issued specific denials as to these two bills and cannot rely upon a general denial based upon a 120 day defense..." and was not based on qualification of eligibility of the injured party. Here, I find that the Applicant's argument unpersuasive that the claim for services 6/14/2023-6/27/2023 in the sum of \$261.85 is overdue as mailed on 7/12/2023. As stated herein, the Respondent has established that the patient has not been qualified as an eligible injured person for no-fault benefits from the Respondent and, consequently, claim is dismissed without prejudice for a determination on qualification for no-fault coverage.

Comparing the relevant evidence presented by both parties against each other, based on the foregoing, the claim is dismissed without prejudice.

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 NJ

SS :

County of Essex

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

09/03/2024

(Dated)

Alana Barran

**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:**  
101635ecef580b6aa18cbbcce00dbd5

### **Electronically Signed**

Your name: Alana Barran  
Signed on: 09/03/2024