

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

EDX Medical Supply Inc
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-24-1338-3449

Applicant's File No. 2808351

Insurer's Claim File No. 8997801

NAIC No. 24309

ARBITRATION AWARD

I, Richard Martino, 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: Assignor/patient

1. Hearing(s) held on 08/27/2024
Declared closed by the arbitrator on 08/27/2024

Scott Fisher Esq. from Israel Purdy, LLP participated virtually for the Applicant

Adam Bird-Ridnell Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$644.00**, 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 seeks reimbursement for a Vena Flow System (DVT), a Vena flow cuff, and crutches, dispensed on 6/10/22, following a 2/27/20 automobile accident.

The issue is whether the Respondent was justified in not reimbursing the Applicant's claims based upon the failure of the applicant to provide written proof of claim pursuant to 65-3.5(c).

The respondent's defense is based upon the fact that it did not receive a complete response to multiple verification requests.

The Assignor, a 16-year-old male, was involved in an automobile accident that occurred on 2/27/20.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing.

This case involves a claim for a Vena Flow System (DVT), a Vena flow cuff, and crutches dispensed on 6/10/22, following a 2/27/20 automobile accident.

The Assignor, a 16-year-old male, was involved in an automobile accident that occurred on 2/27/20.

Applicant makes this claim for the above referenced medical supplies which were prescribed for the injured party/Assignor for the injuries he sustained in the subject automobile accident.

The respondent did not issue a denial of the applicant's claim for the durable medical supplies.

Respondent contends that the applicant has failed to comply with its timely verification requests, specifically seeking the following items: MRI films of the right ankle taken on 3/12/20 and 5/17/20; as well a discharge instructions from a prior surgery.

The evidence reveals the following facts:

The respondent received the subject bill for the medical supplies at issue.

The respondent thereafter sent a timely verification request on 7/29/22 seeking the above referenced information as well as wholesale invoices for the above referenced items.

On 8/30/22 the respondent sent a second timely verification request seeking the same information sought in the initial request.

Applicant, on 10/3/22, responded to the verification requests by providing the requested wholesale invoices.

Applicant also objected to the remaining requests , stating they were not in possession of MRI films and discharge summaries.

On 10/14/22 respondent acknowledged receipt of the wholesale invoices but reiterated its request for MRI films of the right ankle taken on 3/12/20 and 5/17/20; as well a discharge instructions from a prior surgery.

On the basis of the non- cooperation with the verification requests, specifically the alleged failure to provide the outstanding items requested by the respondent, the respondent contends that no valid proof of claim has been presented in this case, and therefore the claim is not ripe for arbitration.

Respondent did not issue a denial for the bill presented by the applicant for benefits for the service that is at issue before me.

I now address the validity of the respondent's defense:

It is clear that the respondent may request verification not only from the applicant, but from any person who has same. The No Fault Regulations make it clear that a proper proof of claim has not been submitted until all proper verification requests have been complied with.

I find that the applicant's 10/3/22 response from the Applicant's counsel was "arguably responsive" to Respondent's verification requests. See All Health Medical Care v. Government Employees Insurance Company, 2 Misc.3d 907, 771 N.Y.S.2d 832 (Civ. Ct. Queens Co. 2004).

I find the remaining demands were outside the possession of the applicant in this case, a medical supplier. The applicant did provide what was in its possession, the wholesale invoices for the durable medical supplies that it dispensed to the Assignor/injured party.

Applicant also argues that all requests for additional verification must be made to verify the particular claim and that these requests were not made to verify the claim but instead were mere attempts to delay the processing of the claim.

While it is arguable that the MRI films may be relevant to the claim for the medical supplies, the applicant supplied what was in its control (the wholesale invoices) and also responded that it was not in possession of the remaining items.

Due to the foregoing reasons I find that the claim is ripe for arbitration.

It is well settled that an applicant for no-fault benefits establishes its prima facie entitlement to payment by proving that it submitted a claim, set forth the fact and the amount of the loss sustained, and proof that the defendant had failed to pay or deny the claim within the requisite 30 day period, or that the defendant had issued a timely denial of the claim that was conclusory, vague, or without merit as a matter of law (see Insurance Law §5106[a]; Ave T MPC Corp v. Auto One Insurance Co., 32 Misc .3d 128 (A), 934 N.Y.S.2d 32; 2011 N.Y. Slip Op 51292 [U],

2011 WL 2712964 (App Term 2d & 11th and 13th Jud Dists. July 5, 2011). A "facially valid claim," is presented where it sets forth the name of the patient; date of accident; date of services; description of services rendered and the charges for those services. See, Vinings Spinal Diagnostic P.C. v. Liberty Mutual Insurance Company, 186 Misc.2d 287; 717 NYS2d 466 (1st Dist. Ct. Nass. Co.)

Applicant has presented a facially valid claim for the bill in dispute.

Respondent failed to issue a denial for the bill presented for payment by the applicant.

Therefore the claim is granted in its entirety.

Applicant is awarded \$644.00.

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 |
|---------|------------------------|---------------------|--------------|-------------------|
| | EDX Medical Supply Inc | 06/10/22 - 06/10/22 | \$644.00 | Awarded: \$644.00 |

| | | |
|--------------|-----------------|------------------------------|
| Total | \$644.00 | Awarded: \$644.00 |
|--------------|-----------------|------------------------------|

B. The insurer shall also compute and pay the applicant interest set forth below. 02/28/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim arose from an accident that occurred on or after April 5,2002 , interest shall be paid , at the rate of 2% per month, simple,from the arbitration filing date , and ending with the date of payment of the award.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Respondent shall pay the applicant an attorney fee , in accordance with 11 NYCRR 65-4.6 (d).

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 Nassau

I, Richard Martino, 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)

Richard Martino

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:
8bfdec3b5989e444b1575e34498f801c

Electronically Signed

Your name: Richard Martino
Signed on: 09/03/2024