

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nu Age Medical Solutions, Inc.
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1315-5577

Applicant's File No. BT23-253302

Insurer's Claim File No. 1128113-01

NAIC No. 16616

ARBITRATION AWARD

I, Fred Lutzen, 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 or "Assignor"

1. Hearing(s) held on 08/06/2024
Declared closed by the arbitrator on 08/06/2024

Heather Landeros, Esq., from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Helen Cohen, Esq., from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,796.00**, 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

This female IP/Assignor (first initial "K") was 34-years-old when she was purportedly injured as a passenger of a Lyft vehicle involved in an automobile accident on 3/13/2023. She was subsequently prescribed and provided a Sustained Acoustic Medicine [SAM] device and coupling bandages (accessories) on 5/3/2023. Applicant seeks reimbursement of \$2,796.00, which includes a 42-day rental at \$58.00 per day for the SAM device (CPT Code E1399) and \$360.00 for the coupling accessories billed under CPT Code A9999.

Respondent issued a general denial on 4/21/2023, asserting lack of coverages defenses. Respondent then reiterated the coverages defenses and added lack of medical defenses

in specific denials issued on 6/15/2023 (Bill#1: \$578.00) and 7/11/2023 (Bill#2: \$1,218.00). The lack of medical necessity defense relies on the peer review report prepared by Dr. Peter Chiu, M.D., dated 6/14/2023. Applicant submitted a rebuttal report prepared by Dr. David Gamburg, M.D., dated 6/26/2024.

The issues presented are (1) whether Respondent has demonstrated its lack of coverage defenses and, if not, (2) whether the DME items provided from 5/3/2023 through on 6/13/2023 were medically necessary, and (3) whether the charges are within fee schedule allowances.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the oral arguments of the parties' representatives, the written submissions, EUO testimony of the IP/Assignor, and the evidence by the parties as contained in the *MODRIA* electronic file maintained by the American Arbitration Association.

Unless the parties' agreement provides otherwise, an arbitrator need not apply the rules of evidence, is not bound by principles of substantive law, may do justice as he sees it, and may apply his own sense of law and equity to the facts as he finds them to be. Matter of New Century Acupuncture, P.C. v. Country Wide Ins. Co., 48 Misc.3d 1201(A), 18 N.Y.S.3d 580 (Table), 2015 N.Y. Slip Op. 50919(U) at 2, 2015 WL 3821534 (Dist. Ct. Suffolk Co., C. Stephen Hackeling, J., June 18, 2015); see also, *Rules for Arbitration of No-Fault Disputes in the State of New York*; Effective August 16, 2013, [p](1), "The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary." <https://nysinsurance.adr.org>.

Background and General Denial

On 4/12/2023, the policyholder [first initial "M"] of the subject policy executed a notarized statement in which he states:

To whom it may concern,

My name is [M] NYSDL# [***]861891, and I would like to state that I was not involved in any accident on the date of 03/13/2023, and nor on any other date involving my 2017 Honda Accord Vin# [***]CR2F83[****]4985 Plate# T753781C. My vehicle was not and has not been rear ended by any other vehicle. If there's any additional information needed, please feel free to contact me at 347-[***]-077[*]."

Sincerely,
[signed by M and notarized]

On 4/14/2023, Respondent stamped as "RECEIVED" the IP/Assignor's executed the NYS FORM NF-2 / Application for No-Fault Benefits, dated 4/12/2023. It was signed on 4/6/2023. Section 10 for the identity of the vehicle she occupied at the time of the accident was left blank although the subject policy number is included on the top of the form.

On 4/3/2023, the IP/Assignor executed an earlier version of her NYS FORM NF-2 / Application for No-Fault Benefits. Section 10 for the identity of the vehicle she occupied at the time of the accident was left blank on this form as well. On the earlier NF-2, signed on 4/3/2023, the policy number was not provided. The policyholder's name was not included on either NF-2.

On 4/21/2023, Respondent issued a general denial stating, in relevant part:

Based on Driver's Statement, the entire claim is denied as driver denies the accident and on the basis that the injuries did not arise from use and occupation of ATIC's insured vehicle.

ENTIRE CLAIM IS DENIED AS THE DOCUMENTATION SUBMITTED DOES NOT ESTABLISH CLAIMANT WAS INVOLVED IN A COVERED EVENT

NO PROOF CLAIMANT IS AN ELIGIBLE PERSON.

NO PROOF OF ACCIDENT.

NO PROOF CLAIMANT WAS IN A CAR INSURED BY AMERICAN TRANSIT NOR HIT BY A CAR INSURED BY AMERICAN TRANSIT

The earliest medical record submitted by either side is the *New Patient - Auto Accident* report by Atlantic Medical & Diagnostic, P.C., dated 3/22/2023. The IP/Assignor presented following the purported accident of 3/13/2023. The IP/Assignor reported, in part, "Patient was a back seat passenger. Patient was in the car. One other person was in the vehicle. ... She was not admitted to the ER went to urgent care."

On 4/3/2023, the IP/Assignor was seen at SSP Spine Sports & Interventional Pain Medicine. Dr. Agarwal noted the IP/Assignor reported that on 3/13/2023 she was "as a backseat passenger of a Lyft cab that was hit on the back on the passenger side. ... Immediately after, she went to the urgent care center..."

On 4/18/2023, the IP/Assignor was seen by Satchell-Lee Tyrell NP at Adult Health PLLC. It states that the IP/Assignor reported, "After the accident, the patient was driven by someone to MD modern Hospital, where she was treated and released the same day."

Discussion

A party seeking insurance benefits must prove that a loss occurred and that the loss was covered by the insurance policy. National Grange Mutual Ins. Co. v. Vitebskaya, 1 Misc.3d 774, 766 N.Y.S.2d 320 (Sup. Ct. Kings Co. 2003).

It is the obligation of the claimant in the first instance to prove that the injured person is a covered person under New York law. Lenox Hill Radiology v. Government Employees Ins. Co., 28 Misc.3d 141(A), 939 N.Y.S.3d 788 (Table), 2010 NY Slip Op 51638(U), 2010 WL 3783324 (App. Term 1st Dept. Sept. 21, 2010).

There is simply insufficient evidence to support that the IP/Assignor was a covered person under New York law or that the purported accident involved the subject vehicle insured by Respondent. The policyholder/owner provided a statement that neither he nor his vehicle, insured by Respondent herein, was involved in an accident on 3/13/2023.

To dispute this evidence, neither the Applicant nor the IP/Assignor submitted anything that identifies the vehicle or the policyholder. Additionally, the urgent care and/or hospital records were not submitted. Finally, there is no evidence that the IP/Assignor or anyone else disputes the policyholder's statement that his vehicle was not involved in an accident on 3/13/2023.

In sum, no evidence disputes the policyholder/owner's statement that neither he nor his vehicle, insured by Respondent herein, was involved in an accident on 3/13/2023.

Since this initial burden is on the Applicant, the claim is denied. Additionally, the policyholder/owner's statement is more persuasive and probative. When weighed against the evidence submitted by Applicant, the preponderance of credible evidence supports that neither the policyholder nor the insured vehicle was involved in an accident on 3/13/2023. For this additional reason, the claim is denied.

In some circumstances, the executed NF-2 would be sufficient to defeat such a brief statement by the policyholder/owner. However, in this case, the IP/Assignor did not even allege in the signed NF-2 that the policyholder or the insured vehicle were involved.

Conclusion

Having carefully considered the submissions of the parties, the relevant case law, and the arguments of respective counsel, I conclude that the preponderance of the credible evidence supports a finding in favor of Respondent

The general denial is sustained. The timely specific denial reiterating the lack of coverage defenses is sustained. The medical necessity and fee schedule issues are deemed moot.

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 Onondaga

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

09/04/2024

(Dated)

Fred Lutzen

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:
e1e53f254204cc1a5bb79d3ac0d82ad6

Electronically Signed

Your name: Fred Lutzen
Signed on: 09/04/2024