

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Myrtle Avenue Trading LLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1308-0204

Applicant's File No. 803.995

Insurer's Claim File No. 1035432-01

NAIC No. 16616

ARBITRATION AWARD

I, Anne Malone, 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 10/04/2024
Declared closed by the arbitrator on 10/04/2024

Vincent Ku, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,467.80**, 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 49 year old EIP reported involvement in a motor vehicle accident on June 12, 2018; claimed related injury and received various items of durable medical equipment (DME) provided by the applicant on August 16, 2018.

The applicant submitted claim for this durable medical equipment. The claim involves two separate bills for DME provided on August 16, 2018. Payment of the bill in the amount of \$1,072.51 was timely denied by the respondent because it did not receive notice of this claim within 30 days of the date of the subject accident.

Payment of the bill in the amount of \$395.29 was also denied based on late notice of claim. However, the denial for this bill was late on its face.

The issues to be determined at the hearing are:

Whether the respondent timely denied the bill in the amount of \$395.29.

Whether the respondent established its defense of late notice of claim for the bill in the amount of \$1,072.51.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Late denial of the bill in the amount of \$395.29

According to the NF-10, the bill dated August 31, 2018 in the amount of \$395.29 was received by the respondent on September 7, 2018. The denial of this bill is dated May 20, 2019. Therefore, it is late on its face.

The penalty for an insurer's failure to issue a timely and proper denial of claim is that it will be precluded from objecting to the claim. In Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co., 114 A.D.3d 33 (2d Dept. 2013) the Appellate Division held that:

Challenges and objections regarding whether the services were in fact rendered, were causally related to a covered accident or

were medically necessary are not available to the defendant insurer

after the onset of litigation unless the insurer proffered a timely and

proper denial of claim within the prescribed time frame.

Under these circumstances, since the respondent did not issue a proper and timely denial within the prescribed time frame of 30 days from receipt of the bill in question, therefore, it has not preserved any defense, except for fee schedule, if applicable.

Based on the foregoing, the respondent has not established its defense of late notice of claim for this bill.

Therefore, the applicant is awarded \$395.29 in disposition of the claim for this bill.

Late Notice of claim

The applicant billed \$1,072.51 for DME provided to the EIP on August 16, 2018 which was timely denied by the respondent for late notice of the claim at issue.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense on the ground that plaintiff untimely notified the respondent of the claim at issue if such defense is not raised in a timely denial. New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001); St. Clare's Hospital v. Allcity Ins. Co., 201 A.D.2d 718 (2d Dept. 1994.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that "late notice will be excused where the applicant can provide a reasonable justification of the failure to give timely notice." 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007); SZ Medical P.C. v. Country-Wide Insurance Co., 12 Misc.3d 52, 817 N.Y.S.2d 851 (App. Term 2nd and 11th Jud. Dists. 2006.)

In the instant matter, the respondent's denial was timely and it contained the requisite language regarding "reasonable justification."

The applicant failed to provide evidence of timely notification of the claim at issue.

Under these circumstances, the respondent has established its late notice defense.

Therefore, the claim in the amount of \$1,072.51 is dismissed with prejudice.

Accordingly, the applicant is awarded \$395.29 and the remainder of the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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
	Myrtle Avenue Trading LLC	08/16/18 - 08/16/18	\$1,072.51	Denied
	Myrtle Avenue Trading LLC	08/16/18 - 08/16/18	\$395.29	Awarded: \$395.29
Total			\$1,467.80	Awarded: \$395.29

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/20/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an

applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 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 CT
SS :
County of Fairfield

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

10/24/2024
(Dated)

Anne Malone

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:
d562c388a0f26f9b10957ad6476c6574

Electronically Signed

Your name: Anne Malone
Signed on: 10/24/2024