

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metropolitan DME Corp
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1320-0896

Applicant's File No. RB-996-347645

Insurer's Claim File No. 0703159566

NAIC No. 19232

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 11/14/2024
Declared closed by the arbitrator on 11/14/2024

Elyse Ulino, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$1,364.76**, 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 29 year old EIP reported involvement in a motor vehicle accident on February 3, 2023; claimed related injury and received cervical traction and LSO provided by the applicant on April 5, 2023.

The applicant submitted a claim for this durable medical equipment (DME), payment of which was denied by the respondent based on a material misrepresentation when the policy was issued.

The issue to be determined at the hearing is whether the respondent established that the denial is proper based on a material misrepresentation at the time that the policy was issued.

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.

This claim involves a New York accident involving a policy issued in for a person who claimed to be a resident at a time that he/she resided in New York for a vehicle which was garaged in New York.

The Explanation of Medical Bill Payment with accompanied the NF 10 states in pertinent part:

Per the testimony of the insured/assignor/claimant... and Allstate Insurance Company's

investigation, there is founded belief that the assignor/claimant provided false information

in procurement of renewal of the insurance policy. That assignor/claimant [EIP] was

aware and had knowledge that false and misleading information was given to Allstate

Insurance Company when the policy in effect was obtained or renewed. Therefore,

insured/assignor/claimant [EIP's] claim for no-fault benefits has been denied.

To support its denial based on material misrepresentation at the inception of the policy of insurance at issue, the respondent submitted the EUO testimony of the assignor in which he testified that at the time that he applied for the policy which would have provided coverage for the subject accident he stated that he was a resident of Emery, South Dakota.

However, according to his testimony, he was staying with a friend in South Dakota. He bought the vehicle, which was involved in the subject accident in Connecticut. The vehicle was registered in South Dakota. He stated that he was going to insure the vehicle in New York, but his friend told him that he could insure it in South Dakota, because he was staying there. He also

testified that he registered and insured the vehicle in South Dakota because the rates would be cheaper than the rates in Rosedale where he was staying with his parents. He further testified that he traveled a lot for business but stayed with his friend in South Dakota often when he wasn't traveling.

The police report indicates that at the time of the subject accident his address was 131-32 233 Street, Queens, NY but that the address for his registration was 411 N 6th St. Emery, SD. His driver's license also contains the NY address.

The submissions confirm that all of his medical treatment was rendered in New York.

The respondent submitted an affidavit from Paul DePaola, Senior Field Support Representative for the respondent who attested to the fact that the policy at issue was written under policy no. 802891790 and that the address provided by the EIP was 411 North 6th Street, Emery, S.D. 57331 for a premium of \$1,131.97 effective January 10, 2023 through July 10, 2023.

The EIP was the only listed on the subject policy. Mr. DePaola attested to the fact that had the policy been written based on residence at 131-32 233rd Street, Rosedale, N.Y. 11422-1306 the premium would have increased from \$1,131.97 to \$9,612.92.

Due to this material misrepresentation made at the procurement of the policy, the respondent denied this claim.

At the hearing, the applicant argued that the affidavit of Mr. DePaola" was insufficient to establish materiality as a matter of law." See Schirmer v Penkert, 41 A.D.3d 688, N.Y.S.2d 796 (2007 App. Div.) in which the court determined that "[t]o establish its right to rescind an insurance policy, an insurer must demonstrate that the insured made a material misrepresentation. A misrepresentation is material if the insurer would not have issued the policy had it known the facts misrepresented." The Schirmer court determined that the issue of materiality is generally a question of fact for the jury.

The court in Schirmer denied summary judgment without make a determination regarding the misrepresentations alleged by the defendant and determined that the affidavit of the insurer's underwriter was "insufficient to establish materiality as a matter of law." See Schirmer, supra. The court stated that "[c]onclusory statements by insurance company employees, unsupported by documentary evidence, are insufficient to establish materiality as a matter of law."

In the instant matter, the respondent provided sufficient evidence to establish a material misrepresentation at the inception of the policy and the affidavit of its Senior Support Representative also include details regarding the differences

between the premium for the policy based on the residence provided by the EIP at the inception of the policy and the premium which would have been charged had the actual correct information had been provided.

Based on the foregoing, I find that the respondent provided sufficient documentation to support its denial of the claim at issue.

Accordingly, 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 claim is DENIED in its entirety

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.

11/18/2024
(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:
b266ecb23a43b1c7fce76e6c2191398e

Electronically Signed

Your name: Anne Malone
Signed on: 11/18/2024