

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Right Choice Supply, Inc.
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-23-1315-7006

Applicant's File No. M23-729065

Insurer's Claim File No. 054902023

NAIC No. Self-Insured

ARBITRATION AWARD

I, Ann Lorraine Russo, 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 11/21/2024
Declared closed by the arbitrator on 11/21/2024

James Errera from Shapiro & Associates, P.C. participated virtually for the Applicant

Craig Marshall from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$548.08**, 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 issue in dispute is the nonpayment by respondent of applicant's bills for medical equipment provided to the forty-three-year-old female patient on 3/29/2023 for a motor vehicle accident on 1/5/2022 this case. Respondent argues that MVAIC does not afford coverage in this case.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the electronic case folder as of the date of the hearing and oral arguments of counsel for the respective parties. No witness testimony was presented at the hearing.

The issue in dispute is the nonpayment by respondent of applicant's bills for medical equipment provided to the forty-three-year-old female patient on 3/29/2023 for a motor vehicle accident on 1/5/2022 this case. The respondent did not issue a denial in this case. Respondent argues that MVAIC does not afford coverage in this case. The amount of \$548.08 is in dispute for the medical equipment in this case. The respondent's position is persuasive in this case.

Respondent's counsel provided that the documents and items to establish that the patient is qualified for MVAIC coverage were not submitted to MVAIC in this case. There was no submission of Notice of Intention to Make a Claim with MVAIC, proof of New York State residency, 24-hour notice, police report, household affidavit, proof of lack of insurance or exhaustion of remedies and other various qualification documents and items were ever received and, therefore, the claim must be dismissed. Applicant argues that its prima facie case for a claim submitted to MVIAC is no different than any claim made to any other insurer and MVAIC's time to pay or deny the claim begins to run upon receipt from the claim not after it has "qualified" the Assignor citing to *New York Hospital Center of Queens v. MVAIC*, 12 A.D.3d 429 (2d Dept. 2004) and *A.B. Medical Services PLLC v. MVAIC*, 6 Misc.3d 131(A) (Sup. Ct. App. T. 2d Dept. 2005). The applicant's counsel stated that its prima facie case for a claim submitted to MVAIC is no different than its prima facie case for any other insurer. As argued by respondent's counsel the respondent does not afford coverage and that such defense survives preclusion. As argued by respondent's counsel MVAIC is a creature of statute (see Article 52 of the Insurance Law) and certain statutory pre-requisites are necessary for MVAIC to afford coverage.

The Respondent, MVAIC, noted that the Applicant's Assignor breached a condition precedent to coverage by failing to file pertinent affidavits and/or documentation as required by Insurance Law Section 5208. In *Peace of Mind, Social Work, P.C. v. MVAIC*, 33 Misc.3d 126(A), 2011 N.Y. Slip Op. 51834(U), the Appellate Term, Second Department stated as follows: "The filing of a timely affidavit providing the MVAIC with notice of intention to file a claim is a condition precedent to the right to apply for payment from MVAIC. Compliance with the statutory requirement of timely filing a notice of claim must be established in order to demonstrate that the claimant is a 'covered person' within the meaning of the statute, entitled to recover no-fault benefits from MVAIC." Since the evidence in this matter indicates that the Assignor did not file all the qualifying documentation and items with Respondent as required by Insurance Law Section 5208 and thereby breached a condition precedent to coverage, the Respondent's position is persuasive. See *Olmeccs Medical Supplies, Inc. v. MVAIC*, 38 Misc.3d 140(A), 2013 N.Y. Slip Op. 50218(U) (App. Term 9th and 10th Jud. Dists. 2013); *M.N.M. Medical Health Care, P.C. v. MVAIC*, 22 Misc.3d 128(A), 2009 N.Y. Slip Op. 50041(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2009).

§ 5201 of the Insurance Law defines the purpose of MVAIC is to provide: for the payment of loss on account of injury to or death of persons who, through no fault of their own, were involved in motor vehicle accidents caused by:

- (1) uninsured motor vehicles registered in a state other than New York,
- (2) unidentified motor vehicles which leave the scene of the accident,
- (3) motor vehicles registered in this state as to which at the time of the accident there was not in effect a policy of liability insurance,
- (4) stolen motor vehicles,
- (5) motor vehicles operated without the permission of the owner,
- (6) insured motor vehicles where the insurer disclaims liability or denies coverage, and
- (7) unregistered motor vehicles.

In addition, this article is intended to provide no-fault benefits for qualified persons for basic economic loss arising out of the use and operation in this state of an uninsured motor vehicle, as provided herein and in the comprehensive motor vehicle insurance reparations act. The legislature determines that it is a matter of grave concern that those persons are not recompensed for their injury and financial loss inflicted upon them and that the public interest can best be served by closing such gaps in the motor vehicle financial security act and the comprehensive motor vehicle insurance reparations act through the continued operation of the motor vehicle accident indemnification corporation.

A "qualified person" entitled to coverage under Article 52 is defined by Insurance Law § 5202(b) as a:

- (i) a resident of this state, other than an insured or the owner of an uninsured motor vehicle and his spouse when a passenger in such vehicle, or his legal representative, or
- (ii) a resident of another state, territory or federal district of the United States or province of the Dominion of Canada, or foreign country, in which recourse is afforded, to residents of this state, of substantially similar character to that provided for by this article, or his legal representative.

Pursuant to Insurance Law § 5221(b)(2) "A qualified person who has complied with all the applicable requirements of this article shall be deemed to be a covered person and shall have only such rights as a covered person may have under article fifty-one of this chapter". In addition, MVAIC "shall have only those rights and obligations which are applicable to an insurer subject to article fifty-one of this chapter."

As a condition precedent to the right to apply for payment, a "qualified person" must file a timely affidavit, pursuant to §5208 of the Insurance Law, providing MVAIC with a Notice of Intention to File a Claim within 90 days of the accident, if the accident was with a Hit & Run or unidentified motor vehicle or within 180 days of the accident, if the accident was with an identified motor vehicle from the accrual of the cause of action "as a condition precedent to the right to apply for payment".

In the Matter of Hempstead General Hospital, as Assignee of Ramon Mills, v. MVAIC, 97 A.D.2d 544, 468 N.Y.S.2d 48 (2d Dept. 1983) the Court held that the notice requirements of Section 5208 of the Insurance Law are applicable to No-Fault claims. Therefore, the Court held that since the alleged injured party failed to timely file a notice of intention to make a claim, he failed to comply with a condition precedent to coverage. (Also See M.N.M. Medical Heath Care, P.C. v. MVAIC, 22 Misc.3d 128(A), 2009 N.Y. Slip. Op. 5004(U) (Sup. Ct. App. T. 2'd Dept. 2009); Bell Air Medical Supply, LLC. V. MVAIC, 16 Misc.3d 135(A), 847 N.Y.S.2d 900, 2007 NY. Slip. Op. 51607(U) (Sup. Ct. App. T. 2'd Dept. 2007). In Peace of Mind Social Work, P.C. v. MVAIC, 33 Misc.3d 126(A), 2011 N.Y. Slip. Op. 51834(U) (Sup. Ct. App. T. 2'd Dept. 2011) the Court held that since the health care provider failed to establish that a notice of intention to make a claim form was submitted to MVAIC, it failed to establish a prima facie case, and the case was dismissed. This defense is available to MVAIC even if it fails to timely deny the claim inasmuch as it involves coverage. (See Ocean Diagnostic Imaging v. Motor Vehicle Accident Indemnification Corp., 8 Misc.3d 137(A), 803 N.Y.S.2d 19 (Table), 2005 N.Y. Slip. Op. 51271(U) (Sup. Ct. App. T. 2d Dept. 2005); A.B. Medical Services PLLC v. Motor Vehicle Accident Indemnification Corp., 10 Misc.3d 145 (A), 814 N.Y.S.2d 889 (Table), 2006 N.Y. Slip. Op. 50139(U) (Sup. Ct. App. T. 2d Dept. 2006); Akita Medical Acupuncture, P.C. v. MVAIC, 14 Misc.3d 405, 829 N.Y.S.2d 857 (Dist. Ct. Nassau County 2006). As the Applicant has failed to show that the pertinent documentation and items to establish that the patient was qualified was filed with MVAIC, the Applicant has failed to establish its prima facie case of entitlement to reimbursement.

In order to be a "covered person" and eligible for benefits from MVAIC, a "qualified person" must meet the requirements of Article 52 of the Insurance Law. Those requirements include New York State residency, timely notarized notice to MVAIC, timely report to the police and proof of lack of insurance coverage. A prima facie case against MVAIC includes proof that a notice of intention to make a claim form was submitted together with the required statutory documents. Olmecs Medical Supplies, Inc. v. MVAIC, 38 Misc. 3d 140(A), 969 N.Y.S.2d 804. Applicant has not submitted the above documents. Respondent argues that these items are a part of the Applicant's prima facie and should be sent with the claim and since they were not sent, the claim is premature. In the instant case, Assignor failed to provide proof that the Injured Party is a qualified person for MVAIC benefits at this time, in accordance with Insurance Law 5202(b), which would be a condition precedent to the right to apply for payment for No-Fault benefits from MVAIC.

Based upon a review of the documentation submitted by both parties, I find that the matter should be dismissed without prejudice.

Accordingly, the applicant's 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 NY
SS :
County of Nassau

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

11/22/2024
(Dated)

Ann Lorraine Russo

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:
7029ddfb8e3b4883d39edd7712d59d1

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 11/22/2024