

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Erie County Medical Center
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-23-1294-4942

Applicant's File No. RFA22-315165

Insurer's Claim File No. 5233L616G

NAIC No. 25178

ARBITRATION AWARD

I, Tasha Dandridge-Richburg, 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 11/13/2023
Declared closed by the arbitrator on 11/13/2023

Ryan Woodworth, Esq. from The Russell Friedman Law Group LLP participated virtually for the Applicant

Nicole McErlean, Esq. from Freiberg, Peck & Kang, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$354,622.58**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount at issue was reduced from **\$354,622.58** to **\$131,905.57** to reflect the proper amount for the treatment/service(s) billed pursuant to the Workers' Compensation Fee Schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 66 year-old male EIP was the driver of a motor vehicle that was involved in an accident on April 29, 2022. At issue in this case is \$131,905.57 for emergency and hospital treatment from date of service April 29, 2022 to June 30, 2022. Respondent denied that claim based upon its contention that the EIP was intoxication and is therefore excluded from coverage. Applicant argues that Respondent's intoxication defense is precluded as it was not raised in a timely denial.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(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. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments by or on behalf of the parties and any testimony given during the hearing.

RESPONDENT'S DENIAL

According to Respondent's denial, Applicant's bill was received on July 13, 2022. The denial is based upon its contention that the EIP was intoxicated at the time of the loss and as such there is no coverage for the claim. The denial does not indicate that any additional verification was requested. Respondent's denial is dated August 31, 2022 and is therefore late on its face.

Respondent argues that its defense is based upon a policy exclusion and therefore it need not be raised in a timely denial.

Applicant argues to the contrary, that defenses based upon policy exclusions must be raised in a timely denial.

Analysis

It is well settled that defenses based upon policy exclusions must be preserved in a timely denial. *Presbyterian Hospital in the City of New York v. Maryland Casualty*, 90 NY2d 274 (1997). In *Presbyterian* the Plaintiff/medical provider sued for reimbursement of No-Fault benefits for hospital treatment. Defendant/carrier timely received the bill and thereafter conducted an investigation of the circumstances of the accident. More than 30 days after receipt of Plaintiff's bill, Defendant issued a denial based upon intoxication. The Court of Appeals affirmed the determination by that lower Court that the carrier's intoxication defense was properly precluded as it had not been raised in a timely denial.

Based upon the law espoused in *Presbyterian*, Respondent's intoxication defense must be precluded and therefore, Respondent's denial cannot be upheld.

As Respondent's denial was untimely, interest is awarded from August 12, 2022 (*the date payment/denial was due*) - August 31, 2022 (*date denial was issued*) and from April 10, 2023 (*filing date*).

Accordingly, I find for Applicant as follows.

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	Amount Amended	Status
	Erie County Medical Center	04/29/22 - 06/30/22	\$354,622.58	\$131,905.57	Awarded: \$131,905.57
Total			\$354,622.58		Awarded: \$131,905.57

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/10/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

As Respondent's denial was untimely, interest is awarded from August 12, 2022 (*the date payment/denial was due*) - August 31, 2022 (*date denial was issued*) and from April 10, 2023 (filing date).

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." 11 NYCRR §65-3.9(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." 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 at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 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 fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." *Id.*

- 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 Erie

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

11/13/2023
(Dated)

Tasha Dandridge-Richburg

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:
02e791cb3437e60a7cc45e34c436c5f0

Electronically Signed

Your name: Tasha Dandridge-Richburg
Signed on: 11/13/2023