American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lincoln Medical & Mental Health Center (Applicant)	AAA Case No.	17-22-1264-0219
	Applicant's File No.	300128129
- and -	Insurer's Claim File No.	1093433-01
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Robyn McAllister, 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: Assignor

1. Hearing(s) held on 04/25/2023
   Declared closed by the arbitrator on 04/25/2023

   John Sherman, Esq. from Law Office of John Sherman, Esq. participated virtually for the Applicant

   Adam Kass, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$86,670.31**, 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

   Whether Respondent properly denied Applicant's claim for providing emergency room and hospital services for Assignor (JT), a 41 year-old male passenger, in connection with treatment of injuries sustained in a motor vehicle accident on January 9, 2021, based on Applicant's alleged failure to send the bill within 45 days and where Respondent sought additional verification.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of $86,670.31 for providing emergency room and hospital services from January 9, 2021 to January 29, 2021 for Assignor (JT), a 41 year-old male passenger, in connection with treatment of injuries sustained in a motor vehicle accident on January 9, 2021. Respondent timely denied Applicant's claim predicated on Applicant's alleged failure to send the bill within 45 days and also sought additional verification.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.,* 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim since Applicant failed to submit the bill to Respondent within 45 days. I disagree. More specifically, Respondent submitted a copy of correspondence from Applicant date-stamped February 4, 2021 noting that the following items were checked off as attached from Applicant to Respondent: completed NF-2, NF-4 and NF-5, AOB, Ambulance report, notice of claim, medical records and patient ID. The line for the "UB04/NF Bill" was not checked off.

Respondent also submitted a denial, which noted that it received Applicant's bill dated April 16, 2021 in the amount of $202,511.24 on April 21, 2021. Respondent's denial dated April 27, 2021 stated as follows:

THIS PROCEDURE CODE IS BEING DENIED AS IT WAS SUBMITTED TO THIS CARRIER BEYOND 45 DAYS FROM THE DATE OF SERVICE. LATE NOTICE WILL BE EXCUSED WHERE THE APPLICANT CAN PROVIDE REASONABLE JUSTIFICATION OF THE FAILURE TO GIVE TIMELY NOTICE. FORWARD ALL DOCUMENTATION THAT MAYBE HELPFUL IN REEVALUATION OF YOUR CLAIM. 2 IN ADDITION THIS CLAIM IS PENDING THE FOLLOWING:

1. *Please be advised that a portion of your claim is delayed pending receipt of a breakdown of the bill to reflect which services and charges are related to the necessary emergency services required to stabilize the patient. To facilitate reimbursement for those services which were rendered to the patient by or under the supervision of a physician, paramedic, or emergency medical technician to treat the onset of sudden pain or injury and to stabilize, please provide a breakdown of the billing to reflect which charges were incurred prior to the patient being stabilized*

2. Services rendered including COLONOSCOPY, BIOPSY AND SOME OTHER SERVICES SEEM TO BE UNRELATED TO MOTOR VEHICLE ACCIDENT ON 1/9/21. Please provide with breakdown of your charges that are related to MVA only

3. Fully completed and signed assignment of benefits. Completed and signed NF-4. Complete emergency room/hospital records

Although Respondent did not submit any requests for additional verification in its submission, Applicant submitted a letter dated May 12, 2021 wherein Respondent stated as follows:

We are In receipt of your resubmission on 5/3/21. Please be advised this bill is pending the following:

1.Please be advised that a portion of your claim Is delayed pending receipt of a breakdown of the bill to reflect which services and charges are related to the necessary emergency services required to stabilize the patient to facilitate reimbursement for those services which were rendered to the patient by or under the supervision of e physician, paramedic, or emergency medical technician to treat the onset of sudden pain or injury and to stabilize, please provide a breakdown of the billing to reflect which charges were incurred prior to the patient being stabilized

Services rendered Including COLONOSCOPY, BIOPSY, ROOM &LOTS OF OTHER SERVICES SEEM TO BE UNRELATED TO MOTOR VEHICLE ACCIDENT ON 1/9/21.

Please provide with breakdown of your charges that are related to MVA only.

Complete emergency room/hospital records.

Assignment of benefits received is unsigned by claimant. Submit signed assignment of benefits,

Submit EAPG/DRG calculations.

Applicant also submitted a letter dated June 2, 2021, wherein Respondent noted receipt of correspondence from Applicant dated May 28, 2021 and requested all of the same items. Another letter dated June 18, 2021 acknowledged receipt of correspondence from Applicant dated May 24, 2021 and requested the breakdown of the bill for the same reasons.

On August 20, 2021, Respondent again acknowledged receipt of correspondence on August 13, 2021 and requested the same breakdown of the bill.

Applicant also submitted the e-mails exchanged between Applicant and Respondent's claims representative regarding the outstanding verification. The correspondence dated September 10, 2021 noted as follows:

Good Afternoon,

I received your voicemail from yesterday in regards to:

Clm# 1093433

Patient: [Assignor]

Provider: Lincoln Medical Center

Bill DOS: 0l/09/21-01/29/21

Total bill amount$ 202,511.24

Thank you for confirming the split bill and drg calculation have been received as of 08/13/21. However I am not understanding what else is needed based on what the representative told me on 09/08/21 and why another delay letter was sent out.

The split bill that you received on 08/13/21 is for the charges that are related to the treatment of the patient from the accident. There is no other bill that can be generate since this split bill has the requested break down of charges.

As for the DRG calculation, the DRG 3214 that is on the UB the calculation is $86,719.51 and that has been submitted twice. If I am missing something with the DRG calculation please let me know.

Please let me know if there is anything else that is needed. Have a great weekend.

On September 14, 2021, Respondent's claims representative responded with a cut and paste of the last request for verification without further explanation.

The same date, Applicant emailed Respondent's representative stating:

As per my email from 09/10/21, as seen below, this information was sent and confirmed received on 08/13/21 by customer service. We submitted the updated split bill with only the charges related to the accident. The DRG calculation was also resubmitted.

I am unclear as to what else is to be sent if we in the DRG calculation and the split bill. Please advise what then would satisfy your request.

On October 8, 2021 by email to Respondent's claims representative Applicant wrote:

As per my last email on 09/14/21 we have submitted the updated split bill with only the charges related to the MVA and the DRG calculation for the DRG that is on this bill.

If you could provide a status update on the bill I would appreciate it.

Applicant sent emails to Respondent on November 12, 2021 and December 14, 2021 with the same message.

By email dated January 14, 2022, Applicant wrote:

As per my last email on 09/14/21 we have submitted the updated split bill with only the charges related to the MVA and the DRG calculation for the DRG that is on this bill. I have sent several follow up emails and have not received an update on the status of the bill. I have tried calling the customer service lince but can never get through.

If you could provide a status update on the bill I would appreciate it.

On February 16, 2022 and March 23, 2022, Applicant emailed:

As per my last email on 09/14/21 we have submitted the updated split bill with only the charges related to the MVA and the DRG calculation for the DRG that is on this bill.

I have sent several follow up emails and have not received an update on the status of the bill. I have tried calling the customer service line numerous times but can never get through to a representative due to high call volume.

If you could provide a status update on the bill I would appreciate it.

There was no evidence presented that Respondent responded to Applicant's correspondence after September 14, 2021.

After review of the evidence presented, I find that since Respondent acknowledged Applicant's "resubmission" received on May 3, 2021 and did not reiterate its 45 day defense, I find that by noting only that the claim was delayed for pending verification,

the 45 day denial was reconsidered based on Applicant's correspondence. Therefore, I find that Respondent's 45 day defense is without merit.

Furthermore, Applicant demonstrated that it responded to Respondent's requests for additional verification and provided a breakdown of the bill for the charges only related to the motor vehicle accident. Indeed, Respondent submitted a coder affidavit that noted that Applicant was entitled to reimbursement more than the amount claimed.

Thus, even if Respondent initially properly delayed Applicant's claim in accordance with 11 NYCRR 65-3.5 and 65-3.6, its failure to respond to Applicant's emails from October 8, 2021 to March 23, 2022 was improper. Since Respondent failed to respond to or acknowledge Applicant's emails within 30 days, it failed to properly toll it's time to pay or deny the claim. *See All Health Medical Care, P.C. v. Government Employees Insurance Co.*, 2 Misc.3d 907 (Civ. Ct. Queens Co. 2004). Therefore, I find that Applicant is entitled to reimbursement for the hospital services in the amount of $86,670.31.

Finally, the insurance policy at issue notes that there is additional personal injury protection (APIP) in the amount of $150,000. Although Respondent's attorney argued at the hearing that the NF-11 was not received, there was no evidence presented that the NF-11 was sent out by Respondent. Therefore, based on the insurance policy submitted, I find that there is sufficient benefits available and this award is not in excess of the policy limits.

Accordingly, Applicant is awarded $86,670.31, the entirety of its claim.

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**
	Lincoln Medical & Mental Health Center	**01/09/21 - 01/29/21**	**$86,670.31**	**Awarded: $86,670.31**
Total			**$86,670.31**	**Awarded: $86,670.31**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/26/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from August 26, 2022, the date of the request for arbitration, for the Claim awarded above at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

The insurer shall pay an attorney's fee in accordance with 11 NYCRR 65-4.6.

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 Westchester

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

04/29/2023
(Dated)

Robyn McAllister

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:
6913546e2ef6f7508c2b2720690649ec

Electronically Signed

Your name: Robyn McAllister
Signed on: 04/29/2023