

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kolb Radiology, P.C.
(Applicant)

- and -

New York City Transit Authority
(Respondent)

AAA Case No.	17-16-1047-9083
Applicant's File No.	RLG-9983-67832
Insurer's Claim File No.	BU201508060010-001
NAIC No.	Self-Insured

ARBITRATION AWARD

I, Steven Greif, 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: IP.

1. Hearing(s) held on 06/20/2017, 12/08/2017
Declared closed by the arbitrator on 12/08/2017

Michael Hayes from Rizzo Law Group PLLC participated in person for the Applicant

Paul Ryan from Jones, Jones, LLC participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,670.40**, 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

Did the applicant prove a prima facie case, specifically that it mailed bills to respondent in a timely manner?

4. Findings, Conclusions, and Basis Therefor

The IP was a 49 year-old woman when she was injured in a car accident on August 6, 2015. This case involves three (3) MRI bills. A lumbar spine MRI was performed on April 9, 2016; and MRIs of the cervical spine and the wrist were performed on April 11, 2016.

This case has already been the subject of a prior Arbitration Hearing and an appeal to a Master Arbitrator. The Master Arbitrator, Vincent M. Esposito, issued an award dated October 24, 2017. The Master Arbitrator reversed the decision of the No-Fault Arbitrator, on the basis that he failed to consider all evidence submitted in regard to the mailing of the bills to respondent and whether the bills were received by respondent. The case was referred to the undersigned to determine whether applicant demonstrated the mailing of the bills to respondent and thereby made out its prima facie case.

In a No Fault case an applicant must make out a prima facie case by proving it billed respondent and that payment remains overdue. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y. 3d 498 (2015).

Respondent submission includes an affidavit of Fausto Tolentino, a claims examiner for respondent, sworn to on January 5, 2017. Mr. Tolentino alleges respondent has no record of receiving any of the 3 MRI bills in question. He makes that assertion based upon his personal knowledge, and upon his review of the claim file for the no-fault claim of the IP.

Applicant's submission includes an affidavit of Brian Edejer, a supervisor in the mailing department of applicant's counsel, sworn to on April 10, 2017. He explains that the mailing department of the law firm takes care of mailing applicant's bills to the relevant insurance company. He explains that on May 13, 2016, in accordance with the regular business practices of his law firm and its mailing department, applicant's claim forms were mailed to New York City Transit Authority C/O CorVel Corporation, PO Box 790, Central Islip, NY 11722.

The law on proof of mailing has been set forth in the case of Natural Therapy Acupuncture v. State Farm Mutual Auto Insurance Company, 41 Misc. 3d 1230 (A) (Civil Ct., Kings Cty 2013). The Court stated that there are three distinct methods to demonstrate proof of mailing: (1) provide an affidavit from an individual with personal knowledge of the actual mailing (citations omitted); (2) acknowledgment by the adverse party that it received the relevant document; and (3) where a party provides proof of a standard office procedure, which ensures that documents are properly addressed and mailed (citations omitted). See also, Residential Holding Corp. v. Scottsdale Insurance Company, 286 A.D. 2d 679, 729 N.Y.S. 2d 776 (2d Dept. 2001).

The business record affidavit by Mr. Edejer would fit into the third method set forth above, provided the address set forth in his affidavit is a correct address for respondent.

Applicant's submission includes three letters dated May 10, 2016, which purported to submit to respondent's three claims for payment of the 3 MRI bills to respondent. All 3 letters were mailed to the New York City Transit Authority C/O CorVel Corporation, PO Box 790, Central Islip, NY 11722. On the other hand, applicant's AR 1 lists the address for respondent as 130 Livingston St., 10th floor, Brooklyn, NY 11201.

Applicant has been unable to demonstrate that the Central Islip address was a proper address for respondent. Respondent has submitted a brief dated December 30, 2016, by Jacqueline Mancino, Esq., an attorney with Jones Jones LLC, the attorneys for respondent, who advises that respondent sometimes uses the Corvel Corporation to conduct audits of medical bills, but it is not authorized to accept claims on behalf of respondent. Furthermore, it is not respondent's duty to prove the address applicant sent the bills to is incorrect. It is applicant's duty to demonstrate that it sent the proof of claim to a proper address for respondent.

Applicant has failed to make out a prima facie case by proving that it billed respondent. A bill mailed to an invalid address for respondent is a nullity.

This claim is denied in its entirety.

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 New York
SS :
County of Nassau

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

12/27/2017
(Dated)

Steven Greif

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:
91702a196e17660dc3150a05c8705dfe

Electronically Signed

Your name: Steven Greif
Signed on: 12/27/2017