

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Niagara Falls Memorial Medical Center
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-16-1039-6679

Applicant's File No. RFA16-190237

Insurer's Claim File No. 06514041

NAIC No. Self-Insured

ARBITRATION AWARD

I, Mona Bargnesi, 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 ["SS"]

1. Hearing(s) held on 12/08/2017, 02/20/2018, 09/04/2018
Declared closed by the arbitrator on 09/04/2018

Ron F. Wright, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

Cortnie Valle from Elco Claims Services participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 107.14**, 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 Applicant is entitled to reimbursement for an office visit on July 24, 2015.

Respondent denied reimbursement based on Applicant's failure to submit the bill within 45 days of the date of service.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's ADR Center as of the date of the hearing. These submissions are the record in this case.

This case arises out of a motor vehicle collision which occurred on May 8, 2015. The 39 year-old allegedly injured her chest and low back.

On July 24, 2015, she received follow-up treatment at Niagara Falls Memorial Medical Center with Michele Sneed, NP.

Where a claimant has failed to submit its claim within 45 days after the rendition of medical services, the claim must be denied. St. Vincent's Hosp. & Medical Center v. County Wide Ins. Co., 24 A.D.3d 748, 809 N.Y.S.2d 88 (2d Dept. 2005).

The...time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. 11 NYCRR 65-1.1.

Respondent asserts that the bill was received on September 28, 2015. It denied the claim on October 6, 2015.

Applicant provided internal notes, reflecting that the claim was sent on August 4, 2015. Another note dated September 22, 2015 states, "clm returned sent to wrong address. s/b ELCO PO Box 541487 Flushing NY 11354. Corrected & resent".

Respondent submitted a copy of an envelope from Applicant postmarked August 4, 2015 addressed to Ellon in Carson, CA. The envelope is stamped on September 12, 2015 with "return to sender undeliverable as addressed".

Respondent included a verification of hospital treatment form (NF-4) dated July 1, 2015, which it mailed to Applicant on July 13, 2015 per the attached envelope. The NF-4 lists Respondent's address as PO Box 541487, Flushing NY 11354.

At the hearing held on September 4, 2018, Nicolette Wilson provided in-person testimony under oath. Her testimony is summarized as follows:

She has been the director of revenue cycle at Niagara Falls Memorial Medical Center since January 2015. Her duties involve scheduling and collection of bills, including no-fault.

She described the standard office practice for the mailing of no-fault bills as follows:

When the patient comes in, the case is registered. CPT codes are assigned. The bill is produced three days from the date of discharge (five days for outpatient services). The system used is Cerner.

The bill is either "clean" or stopped and reviewed for edit, then it is printed automatically to paper. It is either mailed or faxed, depending on the agreement with the particular insurer. It is reviewed for the proper address by the clerks, who place it in a bin in the mailroom. If it is faxed, there is a confirmation sheet.

The bills are fee scheduled manually according to the Workers' Compensation fee schedule.

At the end of the day, there is a check count out.

If there is no insurance information, they call the patient to ask what the insurance is.

Internal notes are made contemporaneously with the mailing and cannot be edited afterward.

On cross-examination, counsel noted that the August 4 entry does not list an address to where the bill was mailed, and that the next entry indicates that it was sent to the wrong address.

Ms. Wilson offered to pull up additional data to check the address, however, the Arbitrator denied this request. Any such documentation would be considered late; moreover, Respondent's counsel was appearing by telephone and would be unable to view same.

I find that Applicant has not met its burden of providing "*written* proof providing clear and reasonable justification for the failure to comply with such time limitation" in accordance with 11 NYCRR 65-1.1 (emphasis added).

While Ms. Wilson credibly testified to Applicant's standard billing practices, the written notes submitted by Respondent clearly reflect that the bill was initially sent to the "wrong address". The data that Ms. Wilson offered to "pull up" concerning the address to which the bill was sent on August 4 not only would be considered late, but also not relevant, since the September 22 note clearly states that it was "wrong".

As Respondent correctly observes, the NF-4 sent on July 13, eleven days prior to the date of service in question, contains the correct address; therefore, Applicant was on notice of the Flushing address.

Based on the foregoing, Respondent's denial is upheld.

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 Erie

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

09/17/2018

(Dated)

Mona Bargnesi

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
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Electronically Signed

Your name: Mona Bargnesi
Signed on: 09/17/2018