

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Borg & IDE Imaging P.C.
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-18-1095-1252

Applicant's File No. RFA18-214503

Insurer's Claim File No. 527567777

NAIC No. 25178

ARBITRATION AWARD

I, Brian Bogner, 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 10/09/2020
Declared closed by the arbitrator on 10/09/2020

Ryan Woodworth, Esq. from Russell Friedman & Associates LLP participated by telephone for the Applicant

Frank Ammendolea, Esq. from Nicolini, Paradise, Ferretti, Sabella participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 200.93**, 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 eligible injured person (EIP) is a thirty-eight (38) year old pedestrian who was struck by a motor vehicle on December 28, 2015. At issue is whether the Applicant established a *prima facie* case and, if so, whether the Respondent is the responsible carrier. The Respondent contends that it did not receive the Applicant's bill for cervical and lumbar x-rays performed on January 11, 2016 prior to the filing of this claim. The Respondent also contends that the EIP was in the course of her employment at the time of the accident and, therefore, her employer's Workers' Compensation carrier is the primary source of recovery.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents uploaded to the ADR Center maintained by the American Arbitration Association. This case was decided based upon the documents uploaded to the ADR Center and the oral arguments of the parties' representatives at the hearing.

This matter arises from an accident that occurred on December 28, 2015. The EIP was a tow truck operator tending to a disabled vehicle. While she was standing by the disabled vehicle, she was struck by a motor vehicle. The EIP began chiropractic treatment and was referred for cervical and lumbar x-rays, which were performed on January 11, 2016.

The Respondent contends that it did not receive the Applicant's bill for the cervical and lumbar x-rays prior to the filing of this claim. The Respondent uploaded an Affidavit from Kristi Fragosa, a Claims Specialist employed by the Respondent, who stated that the Applicant's bill was not received.

An applicant establishes "a *prima facie* showing of their entitlement to judgment as matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D.3d 742 (2nd Dept. 2004). Generally, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee. Residential Holding Corp. v. Scottsdale Ins. Co., 286 A.D.2d 679 (2nd Dept. 2001). The presumption of receipt by the addressee may be created by proof of actual mailing or proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed. Id. Proof of mailing may also be established by a party's acknowledgment of receipt of the documents. Natural Therapy Acupuncture, P.C. v. State Farm Mut. Auto. Ins. Co., 41 Misc. 3d 1230(A) (Civ. Ct., Kings Co., 2013).

The Applicant did not upload any evidence establishing that the bill at issue had been mailed and received and that payment was overdue. As such, the Applicant failed to establish a *prima facie* case.

The Applicant's claim is denied.

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

10/10/2020
(Dated)

Brian Bogner

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:
6b04ee58f1d68f69d5ffb354636d1c68

Electronically Signed

Your name: Brian Bogner
Signed on: 10/10/2020