

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Aharon Gutterman MD, PLLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-19-1149-9315

Applicant's File No. n/a

Insurer's Claim File No. 1062437-02

NAIC No. 16616

ARBITRATION AWARD

I, Felix Papadakis, 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/Assignor

1. Hearing(s) held on 08/18/2021
Declared closed by the arbitrator on 08/18/2021

Rajesh Barua, Esq. from The Law Offices of Hillary Blumenthal P.C. (Melville)
participated for the Applicant

Helen Cohen, Esq. from American Transit Insurance Company participated for the
Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,418.70**, 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 the Applicant has shown timely proof of claim?

The Respondent alleges non-receipt of the subject billing.

Respondent further alleges that the billing was received on the date of the filing of the Ar1.

There are two affidavits submitted, respectively, by each party, attesting to each parties' position.

There is no medical necessity defense.

The date of accident was 6/29/19.

The date of service was 8/26/19.

The IP was female, aged 38, with initials E.G.

The services were a consultaton and EMG/NCV.

The hearing was conducted by Zoom.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the evidence herein.

This decision takes into account that review as well as the oral arguments of the parties.

The issue herein is submission of a timely billing.

The Respondent claims that the first time this billing was seen was on the date of the filing of the Ar1.

Here is the relevant authority:

The regulations state:

11 N.Y.C.R.R. 65.1.1 (c) requires:

In the case of a claim for health service expenses, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or the other necessary services are rendered.

ANALYSIS:

The date of service was 8/26/19.

The date of receipt of the billing was 12/13/19, beyond the requisite time period. This is taken from the denial of claim form.

The matter was denied with a timely denial dated 1/3/20, asserting an untimely submission.

I have reviewed the proofs of the parties.

Here are the results of my review:

The Respondent indicates that this matter was not received in timely fashion and the first time that they saw said billing was then the Applicant filed for arbitration. There are two affidavits.

The Applicant has an affidavit by Sarai Lee. However that affidavit is not supported by the USPS mailing roster typically seen in No Fault matters, and therefore the assertions made in the affidavit are less than credible. I hasten to mention that this affidavit does not outline mailing procedures or give any context to this subject billing but simply says that on the relevant mailing date, it was deposited into a mail box under the custody of the USPS.

The Respondent's affidavit is of a Chevan Douglas who outlined his position and indicated that he searched the file upon receiving the form Ar1 and that the billing was not present. It did outline mailing procedures at the Respondent's office and relevant details therein. It then outlined the process by which this individual searched for a billing when the Ar1 was received and found none. Therefore he states he sent the denial of claim for asserting untimely submission.

After a careful review, I am more persuaded by the affidavit of the Respondent.

The matter must be denied.

The Applicant has not submitted sufficient proof to establish timely mailing. The affidavit of the Applicant is completely insufficient. It only contains one sentence which goes to the mailing aspect of the claim, and essentially does so in a vacuum, without sufficient detail about the affiant's position, mailing practices or other contextual references.

I am not perusaded by the affidavit submitted by the Applicant as it is not a traditional affidavit and does not contain sufficient details to substantiate to my satisfaction, that these billings were timely mailed.

The Respondent's affidavit is the superior document.

Therefore the 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 NY

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

08/23/2021

(Dated)

Felix Papadakis

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:
83a110b6556f9657cff3ce2f0e34a75e

Electronically Signed

Your name: Felix Papadakis
Signed on: 08/23/2021