

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Clear Chiropractic PC
(Applicant)

- and -

Clear Blue Insurance Company
(Respondent)

AAA Case No. 17-21-1224-2886

Applicant's File No. 808755

Insurer's Claim File No. 2000759

NAIC No.

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 05/04/2022
Declared closed by the arbitrator on 05/11/2022

Steve Slotnick, Esq. from Slotnick & Ashkenazy, LLP participated by telephone for the Applicant

Patrick Gessner from INSHUR, Inc. participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,017.32**, 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 claimant was the 29 year-old male driver of a motor vehicle that was involved in an accident on 12/16/20. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue is whether a bill for chiropractic services provided by Applicant 1/4/21-5/24/21 was received by Respondent.

4. Findings, Conclusions, and Basis Therefor

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

The claimant was the 29 year-old male driver of a motor vehicle that was involved in an accident on 12/16/20. The claimant reportedly injured his neck, upper back, lower back, and bilateral knees. There was no reported loss of consciousness. There were no reported lacerations or fractures. Following the accident the claimant was transported to St. Barnabas Hospital where he was evaluated, treated, and released. On 1/4/21 the claimant presented to Hiram Emmanuel Luigi-Martinez, M.D. of Macintosh Medical, P.C. and was initiated on physical therapy. On 1/4/21 the claimant presented to Jongdug Park, D.C. of Clear Chiropractic, P.C. (Applicant) with complaints of headaches, neck pain rated 8/10 (where 0 is no pain and 10 is the worst pain), upper back pain rated 10/10, lower back pain rated 10/10, and bilateral knee pain (unrated). Cervical and lumbar ranges of motion were restricted in all planes (quantified). Positive orthopedic tests were Cervical Compression, Maximal Foraminal Compression, Cervical Distraction, and Kemp's. Manual muscle strength, deep tendon reflexes, and sensation were normal. The claimant was initiated on chiropractic manipulation. The 1/16/21 cervical spine MRI ordered by Ajin Mathew, P.A. produced an impression of C4-C5 level disc bulge with compression of anterior thecal sac and partial effacement of anterior subarachnoid space, C5-C6 level disc bulge with compression of anterior thecal sac and partial effacement of anterior subarachnoid space, and straightening of cervical lordosis, suggestive of pain or muscle spasm. The 1/16/21 right knee MRI ordered by P.A. Mathew produced an impression of intrameniscal tear in the posterior horn of the medial meniscus and mild joint effusion consistent with recent trauma or synovitis. The 1/23/21 left knee MRI ordered by P.A. Mathew produced an impression of intrameniscal tear in the posterior horn of the medial meniscus, anterior subcutaneous soft tissue swelling and edema consistent with recent trauma, and mild joint effusion consistent with recent trauma or synovitis. On 2/8/21 Ajin Mathew, P.A. of Macintosh Medical, P.C. conducted a follow-up examination and performed bilateral paralumbar trigger point injections 4 sites under ultrasonic guidance. The 3/2/21 left shoulder MRI ordered by P.A. Mathew produced an impression of low lying acromion with impingement of rotator cuff and mild joint effusion consistent with recent trauma or synovitis. At issue are chiropractic services provided by Applicant 1/4/21-5/24/21.

Generally, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee. *New York and Presbyterian Hospital v. Allstate Insurance Company*, 29 A.D. 3d 547 (N.Y. App. Div. 2 Dept. 2006) quoting *Matter of Rodriguez v. Wing*, 251 A.D.2d 335 (App. Div. 2 Dept. 1998).

New York law allows that presumption to be "rebutted by admissible evidence that the document was not mailed, was received late, or was never received." *Isaacson v. N.Y. Organ Donor Network*, 405 F. App'x 552, 553 (2d Cir. 2011) (summary order) (citing

Sherlock v. Montefiore Med. Ctr., 84 F.3d 522, 526 (2d Cir. 1996); see also *Vita v. Heller*, 467 N.Y.S.2d 652, 653 (App. Div. 1983).

The bills for dates of service (DOS) 1/4/21-5/24/21 are dated 2/4/21-6/4/21 and are addressed to Clear Blue Ins., Network Adjusters, P.O. Box 9035, Farmingdale, NY 11735. The bills provide the following information: Claim Number 2000759, Date of Loss: 12/16/2019, Policyholder, [EIP], and Claimant: [EIP]. The certificate of mailing appears to confirm the bills were mailed to the address listed on the bills. However, this is based solely on a handwritten six digit number written on the upper right corner of the \$232.36 bill for DOS 1/4/21-1/12/21. Assuming this handwritten notation was made prior to mailing it does correspond to a six digit number on the certificate of mailing.

Respondent argues that the bills are addressed to an incorrect address. Respondent confirmed that Clear Blue Insurance Company is the correct insurance company handling this claim. However, there are no bills addressed to the correct address for Clear Blue Insurance Company or Inshur, Inc. (Inshur), Respondent's 3rd Party Claims Adjuster. Respondent's representative indicated that Inshur is currently Respondent's 3rd Party Claims Adjuster and their mailing address is P.O. Box 3033, Chesterton Indiana 46304. Respondent also submitted the affidavit of claims specialist Karen Ferrara for Inshur who states in part "Network Adjusters, Inc. handled claims for Clear Blue prior to October 14, 2020. Thereafter, Inshur began handling claims for Clear Blue including this claim. This claim arose following October 14, 2020 and therefore has been handled solely by Inshur on behalf of Clear Blue. Inshur's mailing address is PO Box 3033, Chesterton Indiana 46304. Inshur does not maintain any mailing address at P.O. Box 9035 Farmingdale, New York 11735."

Applicant uploaded copies of 8 bills for various services (including chiropractic treatment) that were addressed to the exact same address that were paid (some with interest) for DOS 5/18/21-9/18/21. Applicant's counsel argued that this creates a presumption that the \$3,017.32 bill at issue for an earlier DOS (1/4/21-5/24/21) was also received. Respondent's representative noted that Respondent's correct address (P.O. Box 3033, Chesterton Indiana 46304) was on the checks and Explanation of Benefits (EOBs) for those 8 bills putting Applicant on notice of the correct mailing address. Respondent's representative also noted that Network Adjusters, Inc. usually forwards bills to them (and apparently did so with the 8 bills uploaded by Applicant) but they are not obligated to do so.

Here, Respondent's address changed prior to the date of loss. While it would be good business practice for Network Adjusters, Inc. to forward all bills received at least for some period of time that is the subject of Respondent's prior contract with them. Respondent's checks and EOBs contained the P.O. Box 3033, Chesterton Indiana 46304 address and put Applicant on notice of the correct address. Applicant could have also confirmed the address by contacting the claimant/insured, Network Adjusters, Inc. or Respondent. I am not persuaded that a presumption of mailing was created because some bills that were separately mailed happen to have been forwarded to the correct address. Respondent has established that the bill was mailed to an incorrect address, which is unrelated to Respondent, which has not been rebutted by Applicant. Upon review of the credible evidence, I find Applicant has not demonstrated having satisfied

its mailing obligation of the subject billing; accordingly, a presumption does not arise that the NF-3s were received by the insurer. See, *Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y. 3d 498, 508-509 (2015). Accordingly, the claim is dismissed without prejudice.

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 DISMISSED without prejudice

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

06/03/2022
(Dated)

Charles Blattberg

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:
8ca0e143fdc6bf47741f6e956eab9c50

Electronically Signed

Your name: Charles Blattberg
Signed on: 06/03/2022