

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

John Ward DC d/b/a Walden-Bailey  
Chiropractic Center  
(Applicant)

- and -

Garrison Property & Casualty Insurance  
Company  
(Respondent)

AAA Case No.	17-21-1218-2769
Applicant's File No.	21-29880
Insurer's Claim File No.	036884651-006-000
NAIC No.	25941

**ARBITRATION AWARD**

I, Tasha Dandridge-Richburg, 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 06/27/2022  
Declared closed by the arbitrator on 06/27/2022

Nicole Jones, Esq. from The Morris Law Firm, P.C. participated in person for the Applicant

Scott Ginsberg, Esq. from Marshall Dennehey Warner Coleman & Goggin, P.C. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,612.64**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount at issue was reduced from **\$1612.64** to **\$641.48** to reflect payments made toward the bills at issue and subtraction of the deductible.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 34 year-old EIP was involved in a motor vehicle accident on May 18, 2020. At issue in this case is \$641.48 for chiropractic treatments on dates of service from May 20, 2020 to June 8, 2021. Respondent alleges that the bills were never received.

#### 4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(1), the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments by or on behalf of the parties and any testimony given during the hearing.

#### RESPONDENT'S 45 DAY RULE ARGUMENT

Respondent contends that it did not receive Applicant's bills for the dates of service at issue until the instant Arbitration was commenced and therefore, the bills were not mailed within 45 days as is required by Regulation.

In response Applicant argues the claims were timely submitted and points to fax confirmation sheets that accompany each bill in its submission. The fax confirmation sheets reveal that the documents were successfully faxed to 888-272-1255. Applicant argues that a Google search reveals that this number was a fax number for Respondent.

#### Analysis

An applicant establishes a *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms setting forth proof of the fact and amount of loss sustained were mailed and received by the insurer and that No-Fault benefits are overdue. *Viviane Etienne Medical Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015). *See also, Sunshine Imaging Assn./WNY MRI v. Government Empls. Ins. Co.*, 66 A.D.3d 1419 (App. Div., 4th Dept., 2009).

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 (App. Div., 2nd Dept., 2001); *New York and Presbyterian Hospital v. Allstate Ins. Co.*, 29 A.D.3d 547 (App. Div., 2nd Dept., 2006); *Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co.*, 114 A.D.3d 33 (App. Div., 2nd Dept., 2013). The presumption of receipt by the addressee may be created by: proof of actual mailing, proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed, or a party's acknowledgment of receipt of the document(s). *See, Residential Holding Corp. v. Scottsdale Ins. Co.*, 286 A.D.2d 679

(App. Div., 2nd Dept., 2001) and *Natural Therapy Acupuncture, P.C. v State Farm Mut. Auto. Ins. Co.*, 41 Misc. 3d 1230(A), N.Y.C. Civ. Ct., Kings Co., 2013).

I find that Applicant did not prove the claims were timely mailed. A Google search for this number brought up a list of results that included the USAA website. However, upon following the link to the website, this number was not found anywhere on the website. Thus, I am unable to determine from the evidence submitted whether this number actually belongs to Respondent. Therefore, Applicant's claims are denied.

Accordingly, I find for Respondent.

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

06/28/2022  
(Dated)

Tasha Dandridge-Richburg

## **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:**  
e39c50540dba338d295596f3f21a782b

### Electronically Signed

Your name: Tasha Dandridge-Richburg  
Signed on: 06/28/2022