

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Emmons Avenue Medical Office P.C.  
(Applicant)

- and -

USAA General Indemnity Company  
(Respondent)

AAA Case No.	17-21-1220-1585
Applicant's File No.	OS-54106
Insurer's Claim File No.	044076954002000
NAIC No.	25941

### ARBITRATION AWARD

I, Veronica K. O'Connor, Esq., 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

1. Hearing(s) held on 01/26/2023  
Declared closed by the arbitrator on 01/26/2023

Olga Sklyut, Esq. from Law Office of Olga Sklyut P.C participated virtually for the Applicant

Walid Mabrouk, Esq. from Marshall Dennehey Warner Coleman & Goggin, P.C. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,890.78**, 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 is entitled to reimbursement for extracorporeal shockwave therapy performed as a result of injuries allegedly sustained by the Assignor in an accident that took place on November 9, 2020.

The Respondent has denied a portion of this claim based upon material misrepresentation in the procurement of the insurance policy.

4. Findings, Conclusions, and Basis Therefor

**Pursuant to 11 NYCRR 65-4 (Regulation 68-D), Section 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 decision below is based upon a review of all documents on file in the ADR Center maintained by the American Arbitration Association as of the date of this hearing, as well as any oral arguments of the parties and any testimony given during the hearing.**

**As per 11 NYCRR §65-4.2(3), ("Rocket Docket"), the Applicant shall submit all documents supporting the Applicant's position along with their request for arbitration.... Following this original submission of documents, no additional documents may be submitted by the Applicant other than bills or claims for ongoing benefits. Any additional written submissions may be made only at the request or with the approval of the arbitrator. The written record shall be closed upon receipt of the Respondent's submission or the expiration of the period for receipt of the Respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late". Documents received by the American Arbitration Association after the close of the record and were not considered by this Arbitrator in the rendering of this Award, unless otherwise indicated.**

The Assignor was involved in a motor vehicle accident on 11-9-20. The documentation submitted indicates that the Assignor was the driver of the vehicle when the accident occurred.

The Applicant's submission indicates that the \$1,890.78 billing in dispute is for extracorporeal shockwave therapy performed on 4-15-21.

The Respondent denied two of the Applicant's billings based upon material misrepresentation in the procurement of the insurance policy. According to the Applicant, no denial was issued for the third billing.

The first Amendment to Regulation 68-D (11 NYCRR § 65-4) ("Rocket Docket") provides that within thirty (30) calendar days after AAA advises a Respondent of its receipt of a request for arbitration, the Respondent shall "provide all documents supporting its position on the disputed matter. Such document shall be submitted to the applicant at the same time. The Respondent may, in writing, request that the designated organization provide an additional 30 calendar days to respond based upon reasonable circumstances that prevent it from complying." 11 NYCRR § 65-4.2 (3)(ii). § 65-4.2(3) (iii): The written record shall be closed upon receipt of the Respondent's submission or the expiration of the period for receipt of the Respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late". §65-4.2(3)(iv): Any additional written submissions may be made only at the request or with the approval of the arbitrator.

The American Arbitration Association ("AAA") sent a notice to the Respondent, dated 9-29-21, indicating that its position documents were to be submitted no later than 10-29-21. The letter also stated that documents submitted after that date would be marked "late submission" and "may not be considered by the arbitrator". The Respondent did not request an extension of time to submit its documentation. As the submission was not uploaded to the ADR Center until 10-2-22, almost a year after the due date, the documents are deemed late. The Respondent offered no reasonable excuse or explanation for its failure to timely submit these documents. As such, these documents will not be considered.

An Arbitrator's choice not to allow late submissions has been upheld by the Courts. see Matter of Mercury Cas. Co. v. Healthmakers Med. Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009) and Matter of Global Liberty Insurance Co. v. Coastal Anesthesia Services, LLC, 145 A.D.3d 644 (2016).

An arbitrator acts within her discretionary authority to refuse to entertain any proffered late submissions. Matter of Global Liberty Insurance Co. v. Coastal Anesthesia Services, LLC, 145 A.D.3d 644 (2016) (four days late, per arbitrator award).

Based upon a review of the evidence submitted, the following has been determined:

It is well settled that an Applicant establishes its prima facie entitlement to payment by proving it submitted a claim setting forth the facts and the amount of the loss sustained and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D.3d 742 (App. Div. 2d Dept. 2004).

A review of the record indicates that the Applicant timely submitted its bills to the Respondent. The Applicant therefore has established its prima facie case for entitlement to reimbursement for those bills. Once Applicant has made out a prima facie case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 N.Y.3d 312 (2007).

The Respondent has failed to submit sufficient explanation of its failure to adhere to the Rocket Docket. As the Respondent has offered no reasonable excuse or explanation for its failure to timely submit its supporting documents, the Respondent's late submission is precluded in this matter. I have no alternative but to find that the Respondent did not sustain its defense as its entire submission was late.

Accordingly, Applicant is awarded \$1,890.78.

(23-073)

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Emmons Avenue Medical Office P.C.	04/15/21 - 04/15/21	\$490.00	Awarded: \$490.00
	Emmons Avenue Medical Office P.C.	04/15/21 - 04/15/21	\$700.39	Awarded: \$700.39
	Emmons Avenue Medical Office P.C.	04/15/21 - 04/15/21	\$700.39	Awarded: \$700.39
<b>Total</b>			<b>\$1,890.78</b>	<b>Awarded: \$1,890.78</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 09/24/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

**Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, and a demand for arbitration was not filed within 30 days of the denial, the insurer shall compute interest from the above arbitration request date,**

**at the rate of 2% per month, simple (not compounded), on a pro rata basis using a 30-day month, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).**

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

**As the demand for arbitration was filed after February 4, 2015, this matter is subject to the provisions promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the Applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6(d).**

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY  
SS :  
County of Suffolk

I, Veronica K. O'Connor, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/26/2023  
(Dated)

Veronica K. O'Connor, Esq.

**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:**  
b12e3b32b00140796bca71df7bf36644

**Electronically Signed**

Your name: Veronica K. O'Connor, Esq.  
Signed on: 02/26/2023