

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Right Choice Supply, Inc.  
(Applicant)

- and -

Ace American Insurance Company  
(Respondent)

AAA Case No. 17-22-1269-5497

Applicant's File No. M22-705042

Insurer's Claim File No. 1E01E011779811

NAIC No.

**ARBITRATION AWARD**

I, John Langell, 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 05/16/2023, 09/12/2023  
Declared closed by the arbitrator on 09/12/2023

James Errera, Esq. from Shapiro & Associates, P.C. participated virtually for the Applicant

No one from Ace American Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,858.48**, 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 Assignor is a then 53 year old male who was injured in an automobile accident on 12/21/21. Assignor was provided with certain items of Durable Medical Equipment (DME) from 5/15/22 to 6/28/22. Reimbursement for that equipment was never paid or denied. The issue for resolution at this hearing is whether the Applicant's claims were submitted to and received by the Respondent.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ECF, and the oral arguments presented by the parties' representatives. Any documents contained in the

folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ECF maintained by the American Arbitration Association.

This case was first scheduled for a hearing on 5/16/23. No one appeared on behalf of the Respondent at that time. Due to the Respondent's failure to appear, the case was adjourned to 9/12/23. Once again, however, the Respondent failed to appear. The Respondent has never uploaded any file materials in response to the materials uploaded by the Applicant.

The Applicant avers that the claims at issue in the present case were never paid, denied, or delayed for payment or denial by a request for additional verification. I note that the file materials available for my review do not include a denial, any evidence of payment, or copies of any verification requests. The issue before me is therefore whether the Applicant can establish a prima facie case of entitlement to the payment of its bills, by showing that those bills were submitted to and received by the Respondent. See, Viviane Etienne Med. Care, P.C. v. Country Wide Ins. Co., 2013 NY Slip Op. 08430 (2nd Dept. 2013).

The Applicant has submitted evidence of mailing in the form of postmarked certificates of mailing. The address to which the bills identified in those certificates were purportedly mailed is ESIS, P.O. BOX 6566 Scranton, PA 18505. It is notable, however, that several other addresses are listed for the Respondent in the available file materials. A different address is listed on the Applicant's AR-1, for example, while still another address is listed on a notice issued by AAA, and yet another address is listed on a 5/15/22 record generated by one of the Assignor's medical providers. In several recent Awards, "ESIS" has been identified as a claims administrator for the present Respondent, but the claims address listed in those cases bears a different PO Box number than the one utilized by the present Applicant. See, Case No.'s 17-22-1251-2148, 17-23-1285-4158, and 17-22-1274-1062. In still other cases involving the present Respondent, the PO Box 6566 address was noted to be problematic in certain respects, with the result that the Applicants in those cases were unable to prevail. See, Case No.'s 17-20-1168-1878, 17-20-1170-2361, and 17-20-1160-5758. In the present case, the Applicant was unable to account for the provenance of the address utilized herein, or otherwise to show that the Applicant utilized the correct address for the Respondent, other than to refer to the information reflected on the face of the Applicant's own bills. I note that the Applicant has not submitted an affidavit of mailing clarifying or explaining the information contained in the submitted certificates of mailing.

Under all of the facts and circumstances herein, I am unable to credit the Applicant's evidence of mailing sufficiently to conclude, as a matter of fact, that the bills presently at issue were mailed to and received by the Respondent. Accordingly, I find that the Applicant is unable to establish a prima facie case of entitlement to the no fault benefits at issue, and so dismiss the Applicant's claim for those benefits without prejudice.

The Applicant's claim is therefore 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 NY  
SS :  
County of New York

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

10/11/2023  
(Dated)

John Langell

**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:**  
c548b4bab2fd4e8bf356aaa575728285

### Electronically Signed

Your name: John Langell  
Signed on: 10/11/2023