

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

City Wide Acupuncture PC
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-22-1264-5841

Applicant's File No. 3113726

Insurer's Claim File No. 17586283PIP

NAIC No. Self-Insured

ARBITRATION AWARD

I, Elyse Balzer, 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: JC

1. Hearing(s) held on 10/23/2023
Declared closed by the arbitrator on 10/23/2023

Melissa Scotti, Esq from Law Offices of Andrew J. Costella Jr., Esq. participated virtually for the Applicant

Raymond Mak, Esq from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$188.68**, 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

This arbitration is based on a claim for an initial acupuncture evaluation and acupuncture performed on 8/24/21 on the 19 year old female eligible injured person JC for injuries sustained as in a motor vehicle accident on 8/22/21.

The issue is whether applicant has presented a prima face case.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted telephonically, as all arbitration hearings have been conducted telephonically or via ZOOM since March 15, 2020, due to the COVID-19 pandemic.

4. Findings, Conclusions, and Basis Therefor

Applicant presented a bill for its acupuncture services of 8/24/21.

Respondent argued that it had never received this bill prior to arbitration and, furthermore, that it had not received "30 day notice."

To support its argument respondent presented the affidavit of Thomas Figurski, FCLS, No Fault Technical Specialist for Rental Claims Services which handles the no fault claims against respondent. The affidavit, sworn to on 10/18/22, attested that the bill for applicant's services of 8/24/21 had not been received.

Respondent also presented its denial, dated 9/29/21, issued to JC stating that there was lack of 30 day notice which could be excused upon presentation of proof of reasonable justification for the delay.

Hence the issue is whether applicant has presented a prima facie case.

To carry the burden of showing its prima facie entitlement to reimbursement, applicant must submit evidentiary proof that the prescribed statutory billing forms were mailed and received and that payment of no-fault benefits were overdue. *Nyack Hospital v. Metropolitan Prop. & Cas. Ins. Co.*, 16 A.D.3d 564, 791 N.Y.S.2d 658 (2d Dep't 2005); *Post Traumatic Medical Care P.C. v. Travelers*, 13 Misc.3d 138A, 831 N.Y.S.1d 362 (App. Tm, 2nd Dep't 2006). Applicant must prove "submission" of its claims, which can be demonstrated with proof of proper mailing, which gives rise to the presumption that the claims were received by a carrier. *Impulse Chiropractic P.C. v. Travelers*, 14 Misc.3d 127A, 836 N.Y.S.2d 485 (App. Tm, 2d Dep't 2006).

A properly completed claim form, and proof of submission to a carrier, is sufficient to establish a prima facie case. See, *Dermatossian v NYC Transit Authority*, 67 N.Y.2d 219, 224, 492 N.E.2d 1200, 501 N.Y.S.2d 784 [1986]; *A.B. Medical Services PLLC (German) v New York Central Mutual Fire Insurance Co.*, 3 Misc. 3d 136A, 787 N.Y.S.2d 675 [2d Dept 2004]; *Amaze Med. Supply, Inc. v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [App Term 2d & 11th Jud Dists 2003]; *Damadian MRI P.C.*

(Jones) v Liberty Mutual Insurance Co., 2 Misc. 3d 128A, 784 N.Y.S.2d 919 [App Term 9th & 10th Jud Dists 2003]; King's Medical Supply Inc. v. Country-Wide Ins. Co., 5 Misc.3d 767, 783 N.Y.S.2d 448 (Civil Ct, Kings Co 2003)

Applicant did not present any proof of mailing, or proof of submission by any other means, of its claim to respondent.

Applicant did not present any affidavit or excuse for its failure to present proof of submission or to prove submission.

Based on the proof presented at this arbitration I am constrained to find that applicant has not presented a prima facie case.

Applicant's 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 NY

SS :

County of Westchester

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

10/23/2023

(Dated)

Elyse Balzer

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:
4128a3f7a967e63d0636151e255f0a2d

Electronically Signed

Your name: Elyse Balzer
Signed on: 10/23/2023