

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Macintosh Medical, P.C.
(Applicant)

- and -

Affirmative Direct Insurance Company
(Respondent)

AAA Case No. 17-23-1288-8043

Applicant's File No. JL23-134261

Insurer's Claim File No. BC102P01

NAIC No. 10413

ARBITRATION AWARD

I, Nancy Kramer Avalone, 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 LDN

1. Hearing(s) held on 11/15/2023
Declared closed by the arbitrator on 11/15/2023

Jared Mallimo, Esq. from The Licatesi Law Group, LLP participated virtually for the Applicant

Joshua Mak, Esq. from *Abrams Fensterman, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,186.66**, 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 issue to be decided is whether the Applicant established its *prima facie* case of entitlement to No-Fault reimbursement.

The instant dispute arose out of a motor vehicle accident that occurred on Feb. 27, 2022 involving Assignor LDN, a 29-year old female. Applicant is seeking reimbursement for providing office visits and trigger point injections to Assignor LDN from March 8, 2022 through May 26, 2022. Respondent contended that Applicant's bills were not received (prior to the commencement of this proceeding).

4. Findings, Conclusions, and Basis Therefor

The instant matter was decided based upon the submissions of the parties as contained in the electronic file (E-file) maintained by the American Arbitration Association (MODRIA), and the oral arguments of the parties' representatives. The hearing was held via a web-based video conferencing tool (ZOOM). I have reviewed the documents contained in the E-file, heard the arguments of the parties, and make my decision in reliance thereon.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms were mailed to the respondent, and that payments of No-Fault benefits were overdue. *Westchester Med. Ctr. v. Progressive Cas. Ins. Co.*, 89 AD3d 1081, 1082 (2d Dept 2011). As noted in *New York and Presbyt. Hosp. v. Allstate Ins. Co.*, 29 A.D. 3d 547 (2d Dept. 2006) proof of mailing may be properly established by "either proof of actual mailing or proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed."

Respondent contended it never received the Applicant's disputed bill prior to the commencement of this proceeding.

The Applicant established that it mailed the claims at issue in a timely manner by way of submitting mailing logs for all three dates of service at issue. The mailing logs contained the corresponding dates of service, bill amounts, and the Assignor's name. However, Respondent's address was listed as 4450 Sojourn Drive, Ste 500, Addison, TX 75001.

In support of its defense, Respondent relied on the affidavits of a Claims Examiner and the Program Manager. Respondent submitted the affidavit of Tricia O'Donnell, employed as No-Fault Claims examiner by Respondent since September 14, 2020. Ms. O'Donnell averred that her duties as a Claims examiner include the receipt and review of no-fault bills/claims submitted to carrier Affirmative Direct Insurance Company at the address **One Metrotech Center Suite 1803 Brooklyn, NY 11201**. She gave a description of the regular practices and procedures followed when a No-Fault claim is received and advised that bills herein were not received.

In addition, the Respondent submitted the affidavit of Andrew Don, Respondent's Program Manager, who attested to the Respondent was located at One Metrotech Center, Suite 1803, Brooklyn, NY 11201. He further attested to Respondent having never been located in Texas.

After careful consideration and weighing of both parties' evidence and arguments, the undersigned finds in favor of the Respondent. Respondent adequately established they were never located in Texas and that the appropriate address is One Metrotech Center, Suite 1803, Brooklyn, NY 11201. Based on such evidence, I find Applicant did not establish its *prima facie* case.

The claim is dismissed without prejudice. *This award is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.*

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 Nassau

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

11/15/2023
(Dated)

Nancy Kramer Avalone

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
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Electronically Signed

Your name: Nancy Kramer Avalone
Signed on: 11/15/2023