American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1309-3123
Applicant's File No.	na
Insurer's Claim File No.	0651315910000002
NAIC No.	22055

ARBITRATION AWARD

I, Nicholas Tafuri, 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: Non-assignee (SJW)

1. Hearing(s) held on 12/14/2023
   Declared closed by the arbitrator on 12/14/2023

   Gregory Vinal from Vinal & Vinal, P.C. participated virtually for the Applicant

   Katherine Hazelton from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$672.98**, 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

   Non-assignee (SJW), a 60-year old female, was involved in a motor vehicle accident on February 25, 2021. Following the accident, (SJW) sought medical treatment. In dispute are three (3) bills from various providers for services provided on 2/28/21, 3/1/21, and 6/1/21.

   Respondent's defenses include the 45-day rule, a prior settlement, and an independent medical examination ("IME") by Dr. Stuart Hershon, conducted on 5/11/21.

   The issues presented: Whether Respondent's defenses are sustainable?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an 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 case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

Non-assignee (SJW), a 60-year old female, was involved in a motor vehicle accident on February 25, 2021. Following the accident, (SJW) sought medical treatment. In dispute are three (3) bills from various providers for services provided on 2/28/21, 3/1/21, and 6/1/21.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained, and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Respondent's defenses include the 45 day rule, a prior settlement, and an independent medical examination ("IME") by Dr. Stuart Hershon, conducted on 5/11/21.

Date of service: 2/28/21

Applicant's reimbursement claim, for health services provided on 2/28/21, was denied by Respondent based on the 45-day rule.

The No-Fault Regulations Mandatory Personal Injury Protection Endorsement states:

> Proof of Claim; Medical, Work Loss, and Other Necessary Expenses. In the case of a claim for health service expenses,

> the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or the other necessary services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation.

It is Respondent's contention that it received Applicant's bill, in the amount of $248.80, on 5/10/21, for services provided on 2/28/21. Respondent issued its NF-10, dated 5/14/21, timely denying Applicant's claim on the basis that the bill was submitted more than 45 days after the services were rendered.

A review of the submissions to the ADR Center fails to reveal a proof of mailing to dispute Respondent's defense that the bill, for date of service 2/28/21, was received by Respondent on 5/10/21.

As such, I find Applicant's proof is insufficient to rebut Respondent's defense.

Accordingly, I sustain Respondent's denial based on the 45-day rule. The reimbursement claim, for date of service 2/28/21, is denied.

Date of service: 3/1/21

Non-assignee (SJW) seeks reimbursement for services provided by Lenox Hill Radiology on 3/1/21. Respondent contends that the provider, as assignee of (SJW), previously commenced a lawsuit (by its attorneys The Odierno Law Firm) in the Civil Court, Queens County on March 3, 2022. During the course of litigation, the action was settled.

In support of its defense, Respondent submits a copy of the summons and verified complaint, with Index No.: 705584/22. In addition, Respondent

provides correspondence from Scott F. Odierno, Esq., dated 3/25/22, with a Stipulation of Settlement. Finally, Respondent submits copies of computer screens evidencing the payment of the principle, attorney fees, and filing fees.

Based upon the evidentiary documents submitted, I find that Respondent has established that a lawsuit, on behalf of Applicant, as assignee of SJW, was previously commenced for reimbursement for the services provided on 3/1/21, and it settled.

Since payment was issued by Respondent pursuant to a stipulation of settlement, I find that that no reimbursement is owed.

The reimbursement claim, for date of service 3/1/21, is denied.

Date of service: 6/1/21

A Health Insurance Claim Form, establishes that on 6/1/21, Orthopedic Associates of Long Island PrecisionCare, provided services to (SJW). Respondent's reimbursement denial is based on an independent medical examination ("IME") by Dr. Stuart Hershon, conducted on 5/11/21.

A preliminary issue to be addressed is whether non-assignee (SJW) possesses standing to commence this action. A review of Respondent's submission reveals that on 3/26/21, (SJW) executed an Assignments of Benefits Form. The document clearly establishes the following: "(SJW) ("Assignor") hereby assigns to Orthopedic Associates of LI Physicians & Medical Group dba PrecisionCare ("Assignee") all rights, privileges, and remedies to payment for health care services provided by assignee…".

No proof is presented establishing that this agreement was revoked. Accordingly, based on the executed AOB, I find that (SJW) does not possess the necessary standing to commence this action. The reimbursement claim, for date of service 6/1/21, is denied.

Based on all of the foregoing, the action commenced by non-assignee (SJW), for reimbursement for health services provided on 2/28/21, 3/1/21, and 6/1/21, are denied.

This decision 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 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 Nassau

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

12/19/2023
(Dated)

Nicholas Tafuri

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:
4df3b216ce5bbe14499ca069c7a546a3

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 12/19/2023