

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

East Coast Med Group, Inc.
(Applicant)

- and -

Liberty Mutual Insurance Company
(Respondent)

AAA Case No. 17-22-1255-3393

Applicant's File No. DK22-235506

Insurer's Claim File No. WC823C42021

NAIC No.

ARBITRATION AWARD

I, Drew M. Gewuerz, Esq., CPC, 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: RG

1. Hearing(s) held on 01/02/2024
Declared closed by the arbitrator on 01/02/2024

Jennifer Raheb, Esq., from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Joseph Champion, Esq., from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$639.80**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

See Section 3, *infra*.

3. Summary of Issues in Dispute

This arbitration to recover allegedly overdue PIP benefits involves a female Assignor, D.O.B. 1968, who was involved in a motor vehicle collision on 05/05/21, in an indeterminable capacity. Following the collision, the Applicant supplied the Assignor with a DVT compression device and a Thermotek cold therapy system on 01/26/22. The Applicant now seeks reimbursement of the fees associated with said services.

As per the parties' stipulations, the issue to be decided is whether the Applicant's claim was submitted to the Respondent and said claim is overdue.

4. Findings, Conclusions, and Basis Therefor

This Award is rendered after diligent review and consideration of the parties' evidence submitted to and maintained by the American Arbitration Association's electronic case filing system, "MODRIA," as well as the parties' oral arguments and any testimony presented at this matter's hearing. Evidence that was submitted after this matter's "closing" and without this Arbitrator's authorization was not considered.

All citations in this Award to the Applicant's "Application Document" submission and Respondent's "Defense" submission shall be denoted as "(AXX)" and "(RXX)," respectively. Citation to the parties' supplemental submissions shall be denoted by the selected page out of the submissions' total pages, ("AXX/XX") and ("RXX/XX"), respectively.

The Applicant's claim is awarded because it proves its prima facie case that the claim was submitted to the Respondent and is overdue.

The Applicant alleges that it submitted the disputed claim form to the Respondent and the Respondent allegedly took no action on it. The Respondent explains its inaction as due to the claim's non-receipt.

The Applicant has the initial burden of proving that written proof of claim was submitted to the Respondent. *See Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015). Submission may be made by mail which CPLR § 2103(b) assumes takes five (5) days to complete. Once an Applicant submits proof of claim, insurers are obligated to pay or deny the claim within the statutory 30-day window (unless duly tolled).

An insurer must pay or deny a claim in whole or in part within 30 calendar days after proof of claim is received. N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.8(c) (2002). No-Fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim including verification requested under § 65-3.5. *Id.* § 65-3.8(a)(1).

The Applicant proves submission, and thus, the Respondent's receipt of the claim. Submission was made on 03/01/22, via the United States Postal Service. The Applicant's internal mailing ledger identifies the Applicant, Assignor, relevant date of service, claim total, and addressee. The documentation further shows that the packages were addressed to the Respondent at undisputed addresses: PO Box 5014, Scranton, PA 18505-5014.

The Applicant's evidence proves that it submitted the claim to the Respondent via USPS. Service by mail is complete and the presumptions of delivery and receipt attach. "It is clear that service by mail is complete upon deposit of a properly stamped and addressed

letter in a depository under the exclusive care and custody of the United States Post Office (CPLR 2103, subd [b], par 2; subd [c])." *Engel v. Lichterman*, 95 A.D.2d 536, 543 (App. Div., 2d Dep't 1983) (quoting *Grinan v. Santaella*, 89 A.D.2d 866 (App. Div., 2d Dep't 1982)). The Applicant need not prove actual delivery as long as it proves that it placed the parcel in the custody of the postal carrier and the mailing itself complies with all requisites. See *Engel*, 95 A.D.2d at 543 (citing *A. & B. Serv. Sta.*, 50 A.D.2d) ("[S]ervice by mail is complete regardless of delivery to the addressee."); *Id.* (citing *Anthony v. Schofield*, 265 A.D.2d 423, 425) ("Service by mail is complete regardless of delivery where the mailing itself complies with all requisites."). As a result, the burden shifts to the Respondent to rebut the presumptions of delivery and receipt.

The Respondent denies the claim's receipt, but its mere denial is insufficient to overcome the presumptions and proof. *Id.* The Respondent's denial of receipt must have been supported with actual evidence. See e.g. *id.* at 538 ("Plaintiffs' attorney's mere speculation that the order of preclusion 'was lost in the mail' is insufficient to rebut the presumption of delivery."); *DeFeo v. Merchant*, 115 Misc. 2d 286, 289-90 (City Ct., Mt. Vernon 1982) ("[E]vidence of frequent failure by the post office to properly deposit the mail within the mailboxes of a building was submitted in addition to a mere denial of receipt."). To establish non-receipt, the Respondent must prove that there was an issue with the mailing itself such as an incorrect address or postage amount, or that the mailing itself was unlikely to have occurred due to an articulated and factually supported reason. See *DeFeo supra*; see generally *News Syndicate Co.*, 256 N.Y. at 214 ("The presumption is 'founded upon the probability that the officers of the government will do their duty, and the usual course of business.'"). The Respondent has not proven an issue with the mailing or that the submitted evidence is unreliable. As a result, the Respondent fails to overcome the presumption that it received the respective claim five (5) days after it was placed in the custody and control of the USPS. See CPLR § 2103(b).

As the Respondent acknowledges that it did not pay or deny the claim, the claim became overdue thirty days after the dates of receipt. Accordingly, the claim is awarded.

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
	East Coast Med Group Inc.	01/26/22 - 01/26/22	\$639.80	Awarded: \$639.80
Total			\$639.80	Awarded: \$639.80

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/06/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-4.4(f)(3) (2002), "[i]n an award of interest, the arbitrator shall compute the amount due for each element of first-party benefits in dispute, commencing 30 days after proof of claim therefor was received by the insurer and ending with the day of payment of the award, subject to the provisions of subdivisions (c) and (d) of section 65-3.9 of this Part (stay of interest)."

Pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.9 (2002), "[i]nterest on overdue payments," the Respondent shall pay interest to the Applicant on the awarded overdue PIP benefit at a rate of two percent (2%) per month calculated on a pro rata basis using a thirty (30) day month. As applied to the claim(s) herein, interest accrues from the date of this matter's initiation through the date of payment of the awarded overdue PIP benefit where arbitration was not initiated within 30 days after receipt of a denial(s) of claim(s), or from the date that the claim(s) was(were) overdue where no denial was issued through the date of payment of the awarded overdue PIP benefits.

Initiation occurs, pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-4.2(b) (2002), when an applicant mails the requisite statutory forms, *see* § 65-4.2(b)(1)(i), (ii), along with the applicable filing fee, *see id.* at (b)(1)(iii), to the designated organization with a copy to the insurer. Where the date of mailing is unascertainable from the evidentiary submissions, the date of actual receipt shall control.

The parties stipulated that interest shall run from the date that the American Arbitration Association received the Applicant's requisite statutory forms for this matter except as specifically delineated in § 4, *supra*.

C. Attorney's Fees

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

As this arbitration was filed after February 4, 2015, it is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-4 (2002) (Insurance Regulation 68-D). Accordingly, the Respondent shall pay the Applicant an attorney's fee according to §§ 65-4.6(c), 65-4.6(d). *See Kamara Supplies v. Geico Gen. Ins. Co.*, 2021 N.Y. Slip Op. (App. Div., 1st Dep't 2021).

- 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 Nassau

I, Drew M. Gewuerz, Esq., CPC, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

01/02/2024
(Dated)

Drew M. Gewuerz, Esq., CPC

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:
74c03f1789d414e304161200779dffc

Electronically Signed

Your name: Drew M. Gewuerz, Esq., CPC
Signed on: 01/02/2024