

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rafael Yaakobov Family Health NP PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1328-5407

Applicant's File No. na

Insurer's Claim File No. 1132537-1

NAIC No. 16616

ARBITRATION AWARD

I, Michelle Murphy-Louden, 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: EIP

1. Hearing(s) held on 07/24/2024
Declared closed by the arbitrator on 07/24/2024

Ian Besso, Esq. from The Sigalov Firm PLLC participated virtually for the Applicant

Derek Lynch from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$255.92**, 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 58 year old female EIP was reportedly involved in a motor vehicle accident on June 14, 2023, as a driver.

The issue presented is whether Applicant is entitled to reimbursement for the following as the result of the June 14, 2023, motor vehicle accident:

1. August 16, 2023, initial evaluation and diagnostic tests; and
2. August 18, 2023, telehealth visit.

Respondent contended that it never received Applicant's claim prior to Applicant's filing of its request for arbitration.

This Award is based upon a review of all of the documents contained within the ADR Center electronic case folder as of the date of the Award, as well as upon any oral arguments of the parties and any testimony given during the hearing.

4. Findings, Conclusions, and Basis Therefor

In support of its contention that it never received Applicant's claim prior to Applicant's filing of its request for arbitration, Respondent submitted the February 20, 2024, Affidavit of Cheryl Glaze, No-Fault Claims Supervisor in which she attested that based upon her review of the file and Respondent's computer systems Respondent never received Applicant's claim prior to its receipt of Applicant's AR.

ANALYSIS

As proof of the submission of its claim, Applicant submitted the October 27, 2023, Affidavit of Faxing of Adam Yusupov in which he attested that on September 4, 2023, he faxed the claim with accompanying documents to (516) 653-9707 which he confirmed to be the correct fax number of Respondent. In the body of the Affidavit, Mr. Yusupov inserted a copy of the fax session which shows that the claim and accompanying documents were successfully faxed to the aforementioned fax number on September 4, 2023.

Proof that an item was properly submitted gives rise to a rebuttable presumption that the item was received by the addressee. Residential Holding Corp. v. Scottsdale Ins. Co., 286 A.D.2d 679 (App. Div., 2nd Dept., 2001); New York and Presbyterian Hospital v. Allstate Ins. Co., 29 A.D.3d 547 (App. Div., 2nd Dept., 2006); Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co., 114 A.D.3d 33 (App. Div., 2nd Dept., 2013).

Respondent stated that the fax number to which Applicant faxed its claim was not a fax number for Respondent, that this fax number neither appears on Respondent's website or in the insurer information section of the ADR Center electronic case file for this case. Applicant stated that it believes the fax number was associated with Respondent's Freeport address, but this fax number does not appear on Respondent's website in association with this address.

Given that Respondent has stated that the (516) 653-9707 fax number is not one of its fax numbers, Mr. Yusupov should have explained in his Affidavit how it was that he verified that this fax number was a correct fax number for Respondent. Having failed to do so, I find that

Based upon the foregoin, I find that Applicant has failed to establish a prima facie showing of entitlement to the No-Fault benefits claimed herein by failing to submit evidentiary proof that its claim was submitted and received by Respondent and is now overdue [*see Viviane Etienne Medical Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015). *See also Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D.3d 742 (App. Div., 2nd Dept., 2004); *Nyack Hosp. v. Metropolitan Prop. & Cas. Ins. Co.*, 16 A.D.3d 564 (App. Div., 2nd Dept., 2005); *New York & Presbyterian Hosp. v. Allstate Ins. Co.*, 31 A.D.3d 512 (App. Div., 2nd Dept., 2006); *LMK Psychological Servs., P.C. v. Liberty Mut. Ins. Co.*, 30 A.D.3d 727 (App. Div., 3rd Dept., 2006); *Westchester Med. Ctr. v. Lincoln Gen. Ins. Co.*, 60 A.D.3d 1045 (App. Div., 2nd Dept., 2009); *Sunshine Imaging Assn./WNY MRI v. Government Empls. Ins. Co.*, 66 A.D.3d 1419 (App. Div., 4th Dept., 2009)]. As such, Applicant's claim is denied.

ACCORDINGLY, APPLICANT CLAIM IS DENIED IN ITS ENTIRETY.

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 Saratoga

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

07/25/2024
(Dated)

Michelle Murphy-Louden

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:
4b01f1dae2dace9dea897f0ee0a47289

Electronically Signed

Your name: Michelle Murphy-Louden
Signed on: 07/25/2024