

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sankar Medic Supply Corp.
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-24-1337-7360

Applicant's File No. N/A

Insurer's Claim File No. 18701431

NAIC No. Self-Insured

ARBITRATION AWARD

I, Darren Sheehan, 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: Claimant

1. Hearing(s) held on 07/22/2024
Declared closed by the arbitrator on 07/22/2024

Roman Kulik from Kulik Law Firm, PC participated virtually for the Applicant

Charles Fishbaum from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,552.34**, 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

Applicant submitted a bill in the amount of \$1,552.34 for date of service 8/24/2022. The bill relates to durable medical equipment provided for the benefit of the claimant, a 28-year-old female, involved in a motor vehicle accident on 8/7/2022. The bill was denied payment by respondent on the basis that it was not submitted within 45 days from the date of service.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYC RR 65-1.1, " ... the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company ... as soon as reasonably practicable but, in no event later than 45 days after the date 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 "

The NF-10, denial of claim form, submitted by respondent indicates receipt of the bill on 1/3/2024, well after the 45-day window. The denial reads:

Pursuant to NYCRR 65-2.4(c), written proof of the claim was not submitted to the self-insurer within 45 days after the date services were rendered. Therefore, this claim is denied. Such late proof of claim will be excused should the applicant or assignee provide reasonable justification for the failure to provide timely proof of claim.

Applicant does not deny that it submitted the bill to this carrier on 1/3/2024, as the denial indicates. In fact, the applicant produced evidence of mailing, via a facsimile cover sheet, demonstrating its submission of this claim on said date to the respondent.

Applicant offered into evidence the NF-10, denial of claim form, from GEICO (not the respondent here). This denial shows that the same bill was initially submitted to GEICO and received by them on 10/3/2022, within the 45-day window. GEICO denied the claim providing the explanation that the Applicant had the wrong carrier and went as far as to supply the correct carrier's information, this respondent: "ELCO, claim number 18701431PIP, Adjuster Matthew, Phone# 314-949-2200."

It must be said and noted that despite receiving this information on 10/30/2023, the date of GEICO's denial, applicant did not re-submit its bill to our respondent until 1/3/2024 (more than 2 months later.). Applicant offered no excuse at all as to the reason it initially believed GEICO to be the correct carrier and likewise offered no excuse as to the reason it waited another 2 months before submitting its bill even though by then it had the correct carrier's information.

With all that said, counsel for applicant argued that it was required of respondent to explain within its denial the procedure(s) for which it had in place to "ensure due

consideration of denial of claims based upon late filings," relying on *Bronx Expert Radiology v. Clarendon Nat. Ins. Co.*, 885 N.Y.S.2d 710, 2009 N.Y. Slip Op. 50747(U), App. Term, 1st Dept. 4/20/2009. Left out, of the summarization of this Court's finding was the fact that there, the record demonstrated that the provider's submission included correspondence attempting to explain its delay in filing. We do not have this here. Because it that case, there was an attempt to offer a reasonable excuse, the Court reasoned that under the regulations, an insurer must give "appropriate consideration where the claimant has difficulty ascertaining the insurer's identify or inadvertently submits a claim to the incorrect insurer". Absent a reasonable excuse, or this this instance no excuse at all, none of these *obligations* placed on the respondent should kick in. Besides, let's not forget our provider still waited 2 months before resubmitting its claim even though it then had the correct carrier.

As such, I deny applicant's claim.

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 Suffolk

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

07/30/2024
(Dated)

Darren Sheehan

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:
854e938146c2524edb85f2972397f352

Electronically Signed

Your name: Darren Sheehan
Signed on: 07/30/2024