

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rockaway Park Medical, P.C.	AAA Case No.	17-24-1339-0829
, Silver Needle Acupuncture, PC , IA Chiropractic PLLC (Applicant)	Applicant's File No.	540998,540999,541000,541001,541278, 546566
- and -	Insurer's Claim File No.	06337459000000-2
Geico Insurance Company (Respondent)	NAIC No.	22055

**ARBITRATION AWARD**

I, Victor Moritz, 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: IP

1. Hearing(s) held on 08/01/2024  
Declared closed by the arbitrator on 08/01/2024

David Foreman, Esq. from Leon Kucherovsky Esq. participated virtually for the Applicant

Crystal Russo from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$940.12**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant reduced their claim to \$894.95, acknowledging a payment to IA Chiropractic of \$45.17.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The applicants, Rockaway Park Medical PC (Rockaway) Silver Needle Acupuncture PC ((Silver Needle) and IA Chiropractic PLLC (IA Chiro), seek reimbursement for the costs of services provided to the IP (S.C. 46 year old male) from July 31 through November 3,

2023, relative to a May 6, 2023 motor vehicle accident. The claim by applicants Silver Needle and IA Chiro concerns additional amounts sought based on a fee schedule defense. The claims by applicant Rockaway Park, were denied based on the failure to submit the bills in a timely manner. Further, Rockaway Park's August 29, 2023 evaluation was not denied, as the carrier alleged that they did not receive the bill. This matter is determined after reviewing the submissions and presentations of both sides. I have reviewed the documents contained in the electronic case folder as of the closing of the file. The hearing was held on Zoom.

#### 4. Findings, Conclusions, and Basis Therefor

**I find for the applicant, Rockaway Park, and award \$127.41 for the cost of the August 29, 2023 office evaluation. Rockaway Park's remainder of the claim is denied based on the failure to provide and submit the bills in a timely manner. Further, the claims by applicants IA Chiro and Silver Needle are denied based on the fee schedule.**

#### **IA Chiro and Silver Needle**

The claim for IA Chiro concerns a November 3, 2023 service for which the applicant billed \$57.30 and was reimbursed \$45.17, leaving \$12.13 in dispute. The claim by the applicant, Silver Needle, concerns services on October 23 and October 27, 2023, for which the applicant billed \$171.86 and was reimbursed \$104.10, leaving \$67.76 in dispute. The October 23, 2023 services included a reevaluation.

#### **Fee Schedule**

**Effective October 1, 2020, pursuant to DFS 34th Amendment to Regulation 83** as it pertains to fee schedule rules for no-fault services specifically related to physical therapy, the maximum permissible reimbursement level on dates for physical therapy is limited to twelve relative value units (RVUs) regardless of specialist; see Acupuncture and Physical & Occupational Therapy Fee Schedule, Physical Medicine Ground Rule 3, that limits reimbursement to the various specialists.

When performing a consultation or initial evaluation including multiple procedures and/or modalities on the same day, the maximum number of relative value units is limited to 18.0 or the amount billed, whichever is less for all providers combined. (New York Workers' Compensation Medical Fee, Physical Medicine Ground Rule 8; Chiropractic Fee Schedule, Physical Medicine Ground Rule 2; Acupuncture Fee Schedule, Medicine Ground Rule 1A; Physical Therapy and Occupational Therapy Fee Schedule, Physical Medicine Ground Rule 2).

When performing a reevaluation including multiple procedures and/or modalities on the same day, the maximum number of relative value units is limited to 15.0 or the amount billed, whichever is less for all providers combined. (New York Workers' Compensation Medical Fee, Physical Medicine Ground Rule 8; Chiropractic Fee Schedule, Physical Medicine Ground Rule 2; Acupuncture Fee Schedule, Medicine Ground Rule 1A;

Physical Therapy and Occupational Therapy Fee Schedule, Physical Medicine Ground Rule 2).

When multiple procedures and/or modalities are performed on the same day, the maximum number of relative value units is limited to 12.0 or the amount billed, whichever is less for all providers combined. (New York Workers' Compensation Medical Fee Schedule, Ground Rule 11; Chiropractic Fee Schedule, Physical Medicine Ground Rule 3; Acupuncture Fee Schedule, Medicine Ground Rule 1B; Physical Therapy and Occupational Therapy Fee Schedule, Physical Medicine Ground Rule 3).

In this instance, the respondent has submitted proof of payments to various providers rendering care to the IP, and we have established reimbursement was proper. Specifically for the October 23, 2023 date, where a reevaluation occurred, the respondent established that 6.48 units were reimbursed to Silver Needle, while 8.52 units were reimbursed to a physical therapist (OM Strength Physical Therapy PC), totaling fifteen units.

For the October 27, 2023 acupuncture date of service and the November 3, 2023 chiropractic service, the respondent has established twelve units of modalities has been reimbursed to providers rendering care to the IP.

Therefore, the additional amounts Silver Needle and IA chiro sought are **denied**.

### **Rockaway Park**

Regarding Rockaway Park's claim, 11 NYCRR 65-1.1) states under Proof of Claim as follows: "In the case of a claim for health service expenses, The [EIP] or that persons assignee... 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 of services are rendered. ... The foregoing time limitations for the submission of proof of claim shall apply unless the [EIP] ... submits written proof providing clear and reasonable justification for the failure to comply with such time limitation".

In this instance, the respondent issued denials for the July 31, 2023, office evaluation and OAT, as well as the August 29, 2023 OAT, alleging the bills were not received within the time period prescribed by the regulations.

For each bill, the respondent's denial is dated November 13, 2023 stating the bill was received on November 3, 2023. The explanation of benefits states: "Denial is made due to non-compliance with the Mandatory Personal Injury Protection Endorsement which dictates that the eligible injured person or that persons assignee or representative shall submit written proof of claim as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered. Such late notice will be excused where the applicant can provide reasonable justification of the failure to give timely notice."

The applicant has failed to come forth with any evidence that the bills were submitted timely or that they had a reasonable excuse for the failure to submit the bills in a timely manner. Therefore, these claims are **denied**.

Notwithstanding the claim for the August 29, 2023 office evaluation is awarded.

As noted in New York and Presbyt. Hosp. v. Allstate Ins. Co., 29 A.D. 3d 547 (2d Dept. 2006) proof of mailing is 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." See also, Residential Holding Cy orp. v. Scottsdale Ins. Co., 286 A.D. 2d 679, 680 (2d Dep't 2001), Hospital for Joint Diseases v. Nationwide Mut. Ins. Co., 284 A.D. 2d 374, 375 (2d Dept. 2001), Delta Diagnostic Radiology P.C. v. Chubb Group of Ins., 17 Misc. 3d 16 (App. Term 2d Dept. 2007).

The applicant's proof of mailing consists of a mailing log with the name of the IP, the date of service, the amount at issue, addressed to the respondent with a date stamp November 1, 2023.

Pursuant to 11 NYCRR65-4.5 (o) (Regulation 68-D), the arbitrator shall be the judge of the relevance and materiality of the evidence offered... The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations Bd. of Education, et al. v. Bellmore-Merrick 39 N.Y. 2d. 167 (1976).

In this instance, without an affidavit or other proof submitted by the respondent to establish non-receipt, I accept in this forum that the applicant has established the bill was forwarded to the respondent.

**Therefore, the applicant, Rockaway Park, is awarded \$127.41 for the August 29, 2023 office evaluation.**

### **Interest**

In LMK Psychological Servs. PC v. State Farm Mut. Auto. Ins. Co., 12 NY 3d. 217 (2009), the court addressed the issue of interest and found that pursuant to 11 NYCRR § 65-3.9(c) interest shall be tolled upon the issuance of a denial whether it is timely or not when an applicant does not request arbitration or institute a lawsuit within thirty days after receipt of a denial form or payment of benefits calculated pursuant to Insurance Department regulations. The court noted that even when an untimely denial is submitted the applicant must act to resolve the dispute by initiating litigation or arbitration. Accordingly, once the respondent issued their denial albeit untimely, the interest provision of the regulations was tolled until the issuance of the applicant's AR-1 unless the applicant (Plaintiff) commenced a proceeding within thirty days receipt of the denial. In calculating interest, the date of accrual shall be excluded from the calculation.

*General Construction Law Sec. 20, See also, Morris Medical PC v Geico Ins. Co. (Arb. Maslow, 1/30/08).*

In terms of interest, allowing five days for mailing, I find the respondent was in possession of this bill on November 6, 2023 and therefore, the claim should have been paid or denied by December 6, 2023. Thus, interest will accrue from December 7, 2023 through the payment of the 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Rockaway Park Medical, P.C.	08/29/23 - 08/29/23	\$127.41	\$127.41	Awarded: \$127.41
	Rockaway Park Medical, P.C.	07/31/23 - 07/31/23	\$280.12	\$280.12	Denied
	Rockaway				

	<b>Park Medical, P.C.</b>	<b>08/29/23 - 08/29/23</b>	<b>\$280.12</b>	<b>\$280.12</b>	<b>Denied</b>
	<b>Rockaway Park Medical, P.C.</b>	<b>07/31/23 - 07/31/23</b>	<b>\$127.41</b>	<b>\$127.41</b>	<b>Denied</b>
	<b>Silver Needle Acupuncture, PC</b>	<b>10/23/23 - 10/27/23</b>	<b>\$67.76</b>	<b>\$67.76</b>	<b>Denied</b>
	<b>IA Chiropractic PLLC</b>	<b>11/03/23 - 11/03/23</b>	<b>\$57.30</b>	<b>\$12.13</b>	<b>Denied</b>
<b>Total</b>			<b>\$940.12</b>		<b>Awarded: \$127.41</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/07/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay interest at a rate of two percent per month, simple on a pro rata basis using a thirty day month. With respect to the claim herein, interest will run from December 7, 2023, through payment of the claim.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee in accordance with promulgated 11 NYCRR 65-4.6(d).

With respect to this claim, the applicant is entitled to attorney's fees for the medical services provided to the IP for which the applicant is awarded the sum of \$127.41.

- 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 Westchester

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

08/04/2024

(Dated)

Victor Moritz

#### **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:**  
eb06f6d6ac4af41079cc8925abeb9960

### Electronically Signed

Your name: Victor Moritz  
Signed on: 08/04/2024