

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Five Star Rx. Inc.
(Applicant)

- and -

The Travelers Indemnity Company
(Respondent)

AAA Case No. 17-23-1290-6928

Applicant's File No. 156.592

Insurer's Claim File No. SIR066069

NAIC No. 25682

ARBITRATION AWARD

I, Joseph Endzweig, 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: Assignor

1. Hearing(s) held on 08/06/2024
Declared closed by the arbitrator on 08/06/2024

Allen Tsirelman, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Mary-Claire Vitucci from Claims Service Bureau of New York participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,356.70**, 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

This arbitration arises out of treatment of a 41 year old female for injuries sustained in a motor vehicle accident occurring on 10/12/21. Applicant seeks reimbursement for pharmaceuticals provided to the assignor on 12/2/21 and billed at \$2,356.70. Respondent denies receipt of Applicant's bill.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the documentation contained in the Electronic Case Folder which is maintained by the American Arbitration Association.

This arbitration arises out of treatment of a 41 year old female for injuries sustained in a motor vehicle accident occurring on 10/12/21. Applicant seeks reimbursement for pharmaceuticals provided to the assignor on 12/2/21 and billed at \$2,356.70. Respondent denies receipt of Applicant's bill.

It is Applicants' prima facie burden to establish its entitlement to payment for the subject services.

The Appellate Division, Second Department has held that an Applicant made a prima facie showing of its entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing form had been mailed and received and that payment of no-fault benefits was overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, 774 N.Y.S.2d 564, 2004 N.Y. App. Div. LEXIS 3597 (2d Dept. 2004).

Respondent submits a letter by Mary-Claire Vitucci, a claims adjuster for Claims Service Bureau of New York, Inc. Ms. Vitucci states that Claims Service Bureau of New York, Inc. is the third party administrator for Traveler's Indemnity of Connecticut who is the proper insurance Carrier for this loss. She states that Claims Service Bureau of New York, Inc. never received the subject bill. It appears to have been mailed to the wrong insurance carrier. She notes that Claims Service Bureau of New York, Inc. represents Traveler's Indemnity of Connecticut. They have one office at 1 Tower Square, Hartford, CT 06183. She attached a copy of the New York Department of Financial Services codes showing the correct insurance carrier and their address.

Ms. Vitucci, having personal knowledge of this particular claim has stated that there are no records of receiving the disputed bill.

Applicant provides proof of mailing of the bill in the form of an Affidavit of Faxing. The problem is that the bill was faxed to Traveler's Indemnity Co. at fax # 18668898376. Ms. Vitucci, who appeared at the hearing, reiterated that this was the wrong insurance carrier and indeed, the wrong fax number. She asserted that the correct carrier is Traveler's Indemnity of Connecticut located at One Tower Square, Hartford Connecticut 06183 and that the correct fax number was 516 593-9127.

In AAA Case No. 17-21-1231-9426, Arbitrator Marcelle Brandes held:

Applicant submits proof of mailing establishing it mailed its bill to Travelers Personal Insurance Co, PO Box 430, Buffalo, NY 14240-0430. However, Respondent submits evidence establishing that Traveler's Indemnity of Connecticut is the proper insurance carrier for this loss. The police report lists the insurance code as 050, which according to the New York State Department of Financial Services' insurance codes, Travelers' Indemnity of Connecticut is the carrier. Respondent argues it never received the bill in dispute. Applicant's evidence establishes it did not mail its bill to the correct carrier. Thus, Applicant

has not established a prima facie claim. Additionally, Respondent has established this policy is exhausted.

For all the foregoing reasons, this claim is denied.

In the above case the bill was mailed to Travelers in Buffalo instead of Traveler's Indemnity of Connecticut. The arbitrator held "Applicant's evidence establishes it did not mail its bill to the correct carrier. Thus, Applicant has not established a prima facie claim."

In AAA Case No. 17-19-1147-1425, Arbitrator Lisa Capruso stated:

Respondent argued that the bill has never been received. Respondent maintained that the bill was sent to the wrong insurance carrier. The police report shows insurance code 354 for the vehicle in which the Assignor was a passenger. This code is for Travelers Casualty Company of Connecticut. However, the NF-3 was sent to Travelers Indemnity Co., located in Melville, New York. As such, Applicant has not established its prima facie entitlement to judgment.

Accordingly, the Applicant's claim is dismissed without prejudice.

In that case the bill was served on Travelers Indemnity Co. instead of Travelers Casualty Company of Connecticut. The arbitrator held that Applicant had not established its prima facie entitlement to judgment and the claim was dismissed without prejudice. (See also AAA Case No. 17-22-1268-6937, AAA Case No. 17-22-1268-6940, AAA Case No. 17-19-1146-9031 and AAA Case No. 17-20-1157-5182).

Clearly, here the bill was faxed to the wrong carrier. I, therefore, conclude that Applicant has not established a prima facie showing of entitlement to reimbursement.

Accordingly, this claim is dismissed without prejudice.

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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Westchester

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

08/06/2024

(Dated)

Joseph Endzweig

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:
f71363002905d4c312c2f9686c39539c

Electronically Signed

Your name: Joseph Endzweig
Signed on: 08/06/2024