

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

AAAMG Leasing Corp.
(Applicant)

- and -

The Travelers Indemnity Company of
Connecticut
(Respondent)

AAA Case No. 17-23-1302-4973
Applicant's File No. BT23-239684
Insurer's Claim File No. 19-0045573-001-001
NAIC No. Self-Insured

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 08/05/2024
Declared closed by the arbitrator on 08/05/2024

Heather Landeros, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Donna King from Claims Service Bureau of New York participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,762.34**, 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

The applicant seeks reimbursement for the rental cost of a sustained acoustic medicine (SAM) device prescribed to the IP (K.D. 52 year old male) for use from May 31 through July 11, 2019, relative to a May 3, 2019, where the IP was a passenger in a motor vehicle owned by the New York City Transit Authority (NYCTA). The respondent denied this claim based on an allegation that the provider failed to submit the bill within the time period prescribed by the regulations. No fee schedule issues were raised concerning this bill. This matter is determined after reviewing the submissions and presentations of both sides. I 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 respondent and deny this claim without prejudice.

Legal Principles

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".

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).

Submissions

The respondent's submission includes three denials for the continued rental costs of the SAM device. Each bill was for \$920.78 for dates of service May 31 through June 13, 2019, June 14 through June 27, 2019, and June 28 through July 11, 2019. Each bill was dated July 28, 2022, and the respondent indicated the bills were received on October 21, 2022, with denials issued on November 3, 2022. The explanation of benefits indicated that the bills were submitted late and that the provider was required to submit the bills as soon as reasonably practicable but no more than 45 days after the services are rendered. However, late notice would be excused if the provider provided reasonable justification for the late notice to comply with the requirements of the regulations.

An affidavit from Ingrid Reyes, a billing supervisor for Empower Collection employed by the provider, was submitted to support the applicant's position.

Ms. Reyes continues that the applicant initially submitted these bills to the NYCTA c/o Corvel Claims Services as their third party administrator (TPA) at 130 Livingston Street, Brooklyn, New York 11201, there last known address and the bills were mailed on July 13, 2019.

A fourth bill for the continued rental cost of this item from July 12 through July 25, 2019 at \$920.78 was also mailed to this address on August 20, 2019.

The applicant has submitted a copy of a denial from the respondent for this fourth bill, stating that it was dated August 16, 2019, and was, in fact, received by the respondent on November 25, 2019. A denial was issued on December 11, 2019.

As the respondent denied the fourth bill, the applicant opined that they believed the Livingston Street address was proper, notwithstanding they received no further communication regarding the other three bills at issue herein.

Ultimately, Ms. Reyes states as follows:

after someone answered one of our calls", Empower was instructed to submit the bills to the Claims Service Bureau PO Box 805, Lynbrook, NY 11563.

After resubmitting The Bills to the Lynbrook, NY address on July 29, 2022, we did not receive any communication from Claims Service Bureau. I therefore called Claims Service Bureau to confirm receipt, but no one ever responded to me."

Another billing employee therefore resubmitted The Bills a second time on August 29, 2022, addressed to Claims Service Bureau at PO Box 805, Lynbrook, NY 11563, by placing The Bills in postmarked envelopes under the exclusive care and custody of the United States Postal Service within New York State. Again, we never received a response from Claims Service Bureau. For a third time, an Empower billing employee resubmitted The Bills to Claims Service Bureau on September 27, 2022, addressed to Claims Service Bureau at PO Box 805, Lynbrook, NY 11563 by placing The Bills in postmarked envelopes under the exclusive care and custody of the United States Postal Service within New York State. This pattern continued for a fourth time, where we resubmitted The Bills to Claims Service Bureau at PO Box 805, Lynbrook, NY 11563 by placing The Bills in postmarked envelopes under the exclusive care and custody of the United States Postal Service within New York State.

The Claims Service Bureau acknowledged receipt of the "fourth set of resubmissions" and issued denials to the three bills at issue on November 3, 2022.

The respondent, through their claims representative, who appeared at this hearing and is handling this matter, stated that the respondent had no indication of these three bills until receipt on October 21, 2022. Further, while she could not explain why the fourth bill for dates of service July 12-25, 2022, was processed in 2019, the name and Livingston address utilized were never correct for the respondent. Corvel is not the TPA for these claims.

Further, the respondent noted that the police report, which is also part of the record, establishes the Insurance Code herein listed for the involved vehicle was 354 and further submitted proof establishes that is the code for Travelers Indemnity Company of Connecticut.

Additionally, TPA filed with the NYS Workers' Compensation Board notes the Claims Service of New York Bureau at PO Box 805, Lynbrook, NY 11563.

Analysis

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, neither side has established a position that allows me to make a final determination of this claim.

I accept the respondent's position that the provider should have forwarded these bills to the Lynbrook address, given the information available on the police report. While it remains unclear why the respondent responded to the fourth bill, this does not create a separate mailing address for the respondent's receipt of claims at 130 Livingston Street.

Notwithstanding, the applicant alleges that on three prior occasions in 2022, they mailed the bills to the proper Lynbrook address. However, the respondent never replied, and it was only after the fourth resubmission in September 2022 that the insurer denied the bill.

A denial based on a violation of 11 NYCRR 65-1.1 must be timely. In Central General Hospital v. Chubb Group of Insurance Companies, 90 N.Y.2d 195, (1997), the Court stated: "The denial of liability based upon a lack of coverage within the insurance agreement as framed in part by the litigation strategy and the nature of the dispute, is distinguishable from disclaimer attempts based upon a breach of a policy condition." Since an insurer's defense based upon a breach of a condition precedent to coverage is "subject to the preclusion remedy," it logically follows that it must issue a timely specific denial of claim and cannot rely upon a general denial.

Therefore, if the applicant establishes that the bills were previously mailed in July and August 2022, the respondent's untimely proof of claim defense must fail.

At the hearing, the respondent's representative stated that the only submission from the provider that was part of the respondent's file was that fourth resubmission, received in October 2022. The respondent did not, however, provide a written affidavit, indicating she was in charge of this file and what steps were taken to ensure the respondent was not previously in possession of these bills.

The applicant provided an affidavit from Ms. Reyes mentioning all the steps taken from 2019 through 2022. The 2019 proofs of mailings to Livingston Street address were enclosed. The applicant's submission also included resubmissions dated 9/27/22 for all three bills addressed to Claims Service Bureau, P.O. Box 805, Lynbrook, New York 11563.

As I have reviewed the applicant's resubmission packages, I note all proofs of mailing that were submitted that pertain to the 2022 resubmissions are limited to a date-stamp of October 8, 2022, which comports with the final mailing of the bills, which the respondent acknowledged was received and ultimately denied on November 3, 2022. It is unclear why the applicant did not submit any date-stamped certificate of mailings for the purported submissions in July and August 2022 but only the October 2022 resubmission, which was acknowledged as received by the respondent! This is especially so since the applicant did provide 2019 proof of mailing for all bills to the Livingston Street address in Brooklyn, New York.

Therefore, the case turns on whether the provider can show they submitted the bills in July and August 2022 to the respondent at the correct address. There is insufficient proof from either side as the applicant has not stated why the proofs of mailing are not submitted and the respondent has not indicated via an affidavit that their first receipt of these bills was in October 2022, the claim is **dismissed without prejudice** to allow the parties to provide further supporting papers to address this issue.

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, 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.

08/20/2024
(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:
921f860ace2dde8bde60e877089635ee

Electronically Signed

Your name: Victor Moritz
Signed on: 08/20/2024