

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rambam Ortho Supply Inc.
(Applicant)

- and -

Accident Fund Insurance Company of
America
(Respondent)

AAA Case No. 17-23-1302-8867

Applicant's File No. DK23-333487

Insurer's Claim File No. GENO-001951-1

NAIC No. Self-Insured

ARBITRATION AWARD

I, Tasha Dandridge-Richburg, 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 09/09/2024
Declared closed by the arbitrator on 09/09/2024

Artur Finkel, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Kimberly Glock, Esq. from Law Office of Jason Tenenbaum, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,300.00**, 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 23 year-old male EIP was involved in a motor vehicle accident on November 11, 2022. At issue in this case is \$3300.00 a wearable pulsated electromagnetic field (PEMF) device delivered on date of service December 19, 2022. Respondent argues that the bill was never received. Additionally, Respondent contends that the fee charged exceeded those allowable pursuant to the Workers' Compensation Fee Schedule.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(1), the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. 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. This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments by or on behalf of the parties and any testimony given during the hearing.

45 DAY RULE

Respondent contends that it never received Applicant's bill for date of service December 19, 2022 and therefore, the bill was not mailed within 45 days as is required by Regulation.

In response, Applicant argues that the bill was timely mailed. In support of its argument, Applicant submitted a post office date stamped mailing log, which references the bill at issue. The log includes the date of service, the amount of the bill, and the address the bill was mailed to, "Genteq Claims Investigation, Inc, PO Box 84027, Baton Rouge, LA 70884-4027." The log has an official post office stamp dated January 24, 2023. The log is signed by a postmaster or employee from the post office.

Analysis

An applicant establishes a *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms setting forth proof of the fact and amount of loss sustained were mailed and received by the insurer and that No-Fault benefits are overdue. *Viviane Etienne Medical Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015). *See also, Sunshine Imaging Assn./WNY MRI v. Government Empls. Ins. Co.*, 66 A.D.3d 1419 (App. Div., 4th Dept., 2009).

Generally, proof that an item was properly mailed 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). The presumption of receipt by the addressee may be created by: proof of actual mailing, proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed, or a party's acknowledgment of receipt of the document(s). *See, Residential Holding Corp. v. Scottsdale Ins. Co.*, 286 A.D.2d 679 (App. Div., 2nd Dept., 2001) and *Natural Therapy Acupuncture, P.C. v State Farm Mut. Auto. Ins. Co.*, 41 Misc. 3d 1230(A), N.Y.C. Civ. Ct., Kings Co., 2013).

After a thorough review of the evidence, I find that Applicant proved that the bill was timely mailed.

FEE SCHEDULE

Respondent argues that reimbursement for the equipment billed for should be reduced pursuant to the allowance of the Workers' Compensation Fee Schedule.

In support of its Fee Schedule argument, Respondent submitted an affidavit by Dardan Bunjaku, who identifies himself as a certified coder and certified compliance and regulatory expert. Mr. Bunjaku's affidavit analyzes the Applicant's bill according to his interpretations of the requirements of the Worker's Compensation Fee Schedule. The gist of his argument is that the patient's medical records indicate that the prescribed equipment was a Wearable PEMF Device, and the delivered item included the Wearable PEMF Device on 12/19/2022. However, the billing reflects a charge for an Osteogenesis Stimulator, which was neither prescribed nor delivered.

Analysis

An insurer who raises a fee schedule defense, "will prevail if it demonstrates that it was correct in its reading of the fee schedules." *Jesa Medical Supply, Inc. v. Geico Ins. Co.*, 2009 NY Slip Op. 29386, 25 Misc.3d 1098, 887 N.Y.S.2d 482 (Civ. Ct. Kings Co. 2009). The burden of proving a fee schedule defense falls on the Respondent.

After a thorough review, I find it was proper to utilize code E0747 for the wearable PEMF device. I find Mr. Bunjaku's argument unconvincing. Further, I am not convinced that Mr. Bunjaku's analysis is a coding analysis as opposed to a medical opinion. Therefore, Respondent's Fee Schedule argument fails.

As Respondent did not issue a denial of the bill, interest commences on February 28, 2023.

Accordingly, I find for Applicant.

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	Status
	Rambam Ortho Supply Inc.	12/19/22 - 12/19/22	\$3,300.00	Awarded: \$3,300.00
Total			\$3,300.00	Awarded: \$3,300.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/28/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

As Respondent did not issue a denial of the bill, interest commences on February 28, 2023.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. *See*, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." Id.

- 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 Erie

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

09/09/2024

(Dated)

Tasha Dandridge-Richburg

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:
b52886c1febe6ee88ad0147109fc40a4

Electronically Signed

Your name: Tasha Dandridge-Richburg
Signed on: 09/09/2024