

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Eclipse Medical Imaging PC
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-24-1346-9126

Applicant's File No. AR24-24303

Insurer's Claim File No. 188688776

NAIC No. Self-Insured

ARBITRATION AWARD

I, Frank Marotta, 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-EM

1. Hearing(s) held on 09/10/2024
Declared closed by the arbitrator on 09/10/2024

Alek Beynenson from The Beynenson Law Firm, PC participated virtually for the Applicant

Jake Komar, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,695.81**, 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 record reveals that the Assignor-EM, a 63-year-old-male, sustained injuries in a motor vehicle accident on 9/15/22.

The Applicant seeks reimbursement for MRIs performed on 11/9/22 and 11/22/22.

The Respondent denied the claim asserting that there was a failure to provide written notice of loss within 30 days of the accident.

The issue is whether the Respondent established the policy violations defense asserted on their denials.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of \$2,695.81 for disputed fees in connection with MRIs performed on 11/9/22 and 11/22/22.

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing. In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations. The parties appeared and the hearing was conducted virtually via zoom.

The Applicant prima facie is not in dispute. The Applicant submits proof in the form of a mailing log indicating that their bills for the services on 11/9/22 and 11/22/22 were mailed to the Respondent on 12/20/22. The Respondent provides denials acknowledging receipt of the bills in issue. Together these records are sufficient to establish that the bills in issue were submitted to and received by the Respondent for the purposes of Applicant's prima facie case, Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 114 A.D.3d 33, 977 N.Y.S.2d 292 (2d Dept. 2013), *aff'd* 25 NY 3d 498 (2015); Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004); Lopes v. Liberty Mutual Ins. Co., 24 Misc.3d 127(A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009); Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co., 2005 NY Slip Op 25402, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

There is also no dispute that the Respondent issued timely claim denials specific denials preserving for consideration their defenses that there was a failure to provide timely notice of loss. New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept. 2001); Sunrise Acupuncture, PC v. ELRAC, Inc., 2016 N.Y. Slip Op. 50905(U) (App. Term 1st Dept. 2016); St. Clare's Hospital v. Allcity Ins. Co., 201 A.D.2d 718 (2d Dept. 1994); TAM Medical Supply, Inc. v. Country-Wide Ins. Co., 56 Misc.3d 131(A), 2017 N.Y. Slip Op. 50921(U) (App. Term 2nd, 11th & 13th Dists. Jul. 14, 2017); Sunrise Acupuncture, PC v. ELRAC, Inc., 2016 NY Slip Op. 50905(U) (App. Term 1st Dept. 2016).

The Respondent denied both bills noting "*pursuant to NYCRR 65-2.4(b), written notice of claim was not submitted to the self-insurer within 30 days of the accident. Therefore, this claim is denied. Such late notice will be excused should the Applicant or the Assignee provide reasonable justification for the failure to give timely notice.*"

In support of its defense the Respondent provides an earlier decision by Arbitrator Lisa Capruso in the linked matter Family RX Corp a/a/o EM and Enterprise Rent A Car, AAA Case NO.: 17-23-1303-6769 in which Arbitrator Capruso found for the Respondent and denied the claim of Family RX Corp based on the failure of the Assignor to provide timely written notice of loss. Arbitrator Capruso's decision is dated 2/9/24.

On 7/2/24 the Respondent appeared before the undersigned in the linked matter Health Wellness Medical Services PLLC a/a/o EM and Enterprise Rent A Car, AAA Case No. 17-23-1320-6400 asserting the failure of the Assignor to provide timely written proof of loss the failure of the Applicant to provide timely proof of claim. In my award dated 7/8/24 and as to the Respondent's defense that the that the Assignor failed to provide timely notice of loss, I noted

"The No-Fault Regulation dictates the time frame in which notice of loss and proof of claim must be submitted by a healthcare provider.

Section 11 NYCRR §65-2.4 dealing with self-insurers states as a condition to coverage the following:

(a) Action against self-insurer. No action shall lie against the self-insurer unless, as condition precedent thereto, there shall have been full compliance with the terms of this action.

*(b) Notice. In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by or on behalf of each eligible injured person to the self-insurer's authorized agents, as soon as reasonably practicable, **but in no event more than 30 days after the date of the accident**, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation..."*

...

As to their late notice of loss defense the Respondent provides an affidavit by Thomas Figurski sworn to on 8/1/23. Mr. Figurski is a No-Fault Technical Specialist for Rental Claims Services (RCS), the entity that handles claims for all no-fault benefits filed against Elrac, LLC formally Elrac, Inc. Mr. Figurski's affidavit goes on to say that he has been employed at RCS since September 2000 and that prior to 8/1/21, ELCO Administrative Services Company was doing business as ELCO Claims Services. At all relevant times, our mailing address was P.O. Box 5000, Manhasset, NY 11030 but prior to May 9th, 2019, the Respondent's mailing address was P.O. Box 541487, Flushing, NY 11354. Mr. Figurski highlight his job duties that include the handling and management of no-fault claims against Elrac, LLC, EHI, Enterprise Rent A Car Company, RCS and any of its related companies and processing any and all of these no-fault claims including but not limited to issuing payments, verification request and denials. Mr. Figurski indicates that he is personally familiar with all claims brought by or on behalf of the Assignor concerning the accident of 9/15/22 based upon a review of the physical

file, computer records, and logs maintained by RCS in their ordinary course of business and personally maintained by him. Mr. Figurski attests that he is also familiar with the mailing practices and procedures as well as RCS' practices and procedures for receiving no fault applications, claims, or bills for no fault claims and responses to verification requests. Mr. Figurski asserts that he is familiar with the claims involving the Assignor as he was the assigned adjuster. Mr. Figurski explains the practices and procedures in place at RCS as to when a document is received, where it is listed and how it is assigned a claim number. He reports that it is RCS' office procedure and policy for all adjusters to memorialize RCS' receipt of all documents relating to a claim number by entering detailed notes, identifying the correspondence/article of mail received and action taken into the computerized claim notes log system maintained by RCS. When a no-fault bill is received, an RCS adjuster enters the information from the bill into our computer system. Such information includes, but is not limited to, date of receipt, date of service, amount claimed, provider name and address, ECT. Upon entry, such information is saved into the computer system, and such notes cannot be altered. Likewise, the physical bill or verification response is placed in the appropriate physical file. According to Mr. Figurski there is nothing in the physical file or computer record for the above claim that would indicate that standard corporate procedures were not followed in the instant matter. There is nothing in the physical file or the computer record/logs that would indicate that the documents mailed were returned to this office. Mr. Figurski concludes that RCS did not receive claimant's NF-2 within 30 days of the alleged accident.

Under the above cited regulation, it is not necessary that an injured party submit an "Application for No-Fault Benefits" (NF-2) within 30 days to satisfy the notice requirement. The notice requirement may be satisfied with a written notice other than the NF-2. Written notice of claim may be satisfied with the "receipt of a Department of Motor Vehicles Accident Report (MV 104) or other accident report indicating injuries the eligible injured persons...." See 11 NYCRR 65-3.3 (c). Under 11 NYCRR 65-3.3 (c) a police report showing injuries the Assignor would also satisfy the notice requirement. Under 11 NYCRR 65-3.3 (d) the written notice requirement of section 65-2.4 would be satisfied with a completed hospital facility form. Section 65-3.3 further indicates that notice may be given to the self-insurer's authorized agents. In addition to Respondent proof failing to indicate when it first received a written notice of claim for the Assignor setting forth the time, place, and circumstances of the accident, Mr. Figurski's Affidavit does not sufficiently address whether written notice was provided by any other means, other than the NF-2. As such, I find Respondent's denial premised on the failure of the Assignor to provide timely written notice of the claim to be without merit."

Although the Respondent asserts that the police report (actually an MV104 of the insured driver) in the Applicant's submission does not provide any evidence of injury, the Respondent still has not provide sufficient proof from anyone with knowledge of the fact as to when they were first received notice of loss. The Affidavit by Mr. Figurski submitted by the Respondent in the instant matter is not even for the claim filed by this Assignor but for EM, a different occupant in the vehicle. It is also noted that there is proof of mailing from a medical provider in Brooklyn, New York showing they mailed something to Sedgwick Claims on 10/14/22, 29 days after the accident, for this Assignor as well as three other individuals.

After a review of the documents contained in the ECF in the instant matter and in consideration of the arguments made by the parties at the hearing, I see no reason to alter my earlier finding that the Respondent has not met its burden establishing their defense.

For the reasons noted above the Applicant is awarded its claim in the amount of \$2,695.81.

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
	Eclipse Medical Imaging PC	11/09/22 - 11/09/22	\$1,692.61	Awarded: \$1,692.61
	Eclipse Medical Imaging PC	11/22/22 - 11/22/22	\$1,003.20	Awarded: \$1,003.20
Total			\$2,695.81	Awarded: \$2,695.81

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/07/2024 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 2% per month, calculated on a pro rata basis using 30-day month and in compliance with 11 NYCRR §65-3.9. Interest shall begin to accrue from the date of filing with the American Arbitration Association and end on the date the award is paid.

C. Attorney's Fees

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

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 \$850." Id. The minimum attorney fee that shall be awarded is \$60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6 (i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360." 11 NYCRR 65-4.6(d).

- 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 Suffolk

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

09/11/2024
(Dated)

Frank Marotta

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:
8e3d408268da997429fbbf26b4abe87b

Electronically Signed

Your name: Frank Marotta
Signed on: 09/11/2024