

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sky Radiology, PC.
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-23-1308-4999

Applicant's File No. FDNY23-67611

Insurer's Claim File No. 18944255

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 08/22/2024
Declared closed by the arbitrator on 08/22/2024

Todd Fass, Esq. from Fass & D'Agostino, P.C. participated virtually for the Applicant

Johnny Ko, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,899.62**, was AMENDED and permitted by the arbitrator at the oral hearing.

The Applicant amended the amount in dispute to \$2,657.99 to conform with the Respondent's fee schedule expert, Jeffrey Futoran, CPC.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulate and agree that the amended amount in dispute does not exceed the permissible fees allowable under the applicable New York State Workers' Compensation Fee Schedule (WCFS) for the services provided.

3. Summary of Issues in Dispute

The record reveals that the Assignor-EM, a 36-year-old-female, sustained injuries in a motor vehicle accident on 9/15/22

The Applicant seeks reimbursement for MRIs of the left elbow on 11/28/22 and left shoulder and left hand on 12/12/22.

The Respondent provides a general denial of the Assignor's entire claim dated 10/24/22 asserting that the Assignor did not provide timely written notice of loss or reasonable justification for the failure to do so.

The Respondent provides a claim specific denial dated 3/9/23 asserting that the Assignor did not provide timely written notice of loss or reasonable justification for the failure to do so and further the failure of the Applicant to provide written proof of claim or reasonable justification for the failure to do so.

The issue is whether the Respondent properly denied the claim.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of \$2,899.62, amended to \$2,657.99, for disputed fees in connection with MRIs performed on 11/28/22 and 12/12/22.

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.

On 10/24/22 the Respondent issued a general denial of the Assignor's entire claim 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."

On 3/9/23 the Respondent issued a claim specific denial 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."

and

"pursuant to NYCRR 65-2.4(c), written proof of claim was not submitted to the self-insurer within 45 days after the date of services were rendered. 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."

The No-Fault Regulation dictates time frames in which a notice of loss and proof of claim must be submitted to a self-insurer.

The Mandatory Personal Injury Protection Endorsement, see 11 NYCRR §65-2.4 states in part:

"Conditions

(a) Action against self-insurer.

(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 or any of 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...."

*(c) Proof of claim; medical, work Loss, and other necessary expenses. In the case of a claim for health service expenses, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, **in no event later than 45 days after the date services are rendered....**The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation...."*

In support of their defense the Respondent provides an affidavit of Thomas Figurski 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 is sworn to on 7/11/23. Mr. Figurski's affidavit goes on to say that he has been employed at RCS since September 2000. He attests to the fact that prior to 8/1/21, ELCO Administrative Services Company was doing business as ELCO Claims

Services. He further asserts that at all relevant times their mailing address was P.O. Box 5000, Manhasset, NY 11030 but prior to 5/9/19 their mailing address was P.O. Box 541487, Flushing, NY 11354 Mr. Figurski goes on to explain 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.

In terms of RCS' practices and procedures for receipt of documentation for no-fault claims and verification requests and bills, it is standard operating procedure that each and every claim be given a unique claim number for each separate and distinct motor vehicle accident. In the instant matter the claim number 1-----5 was assigned to the claims arising from the motor vehicle accident involving EMM from the motor vehicle accident alleged to have occurred on 9/15/22. Assigned claim numbers, along with additional pedigree information, are referenced on every document and correspondence that is generated and mailed by RCS.

Mr. Figurski explains the details as to when a document is received, it is immediately stamped or perforated by a Claims Office Assistance with the date received on a daily basis. The Claims Office Assistant then proceeds to check our office computer system to identify the claim number, and which adjuster is handling the specific claim at issue. Once the claim number and adjuster had been identified, the Claims Office Assistant places the mail in each adjustor's individually labeled incoming mail bin in our office mail room to be retrieved daily by adjusting staff. On each and every workday, each adjuster must retrieve all of its mail that is placed in their individually labeled mail bin. It is RCS' s office procedure and policy for all adjusters to memorialize RCS' s 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 note cannot be altered. Likewise, the physical bill or verification response is placed in the appropriate physical file. The Claims Office Assistant retrieves the mail from the office bin on each business day and personally delivers all outgoing mail to a post office box under the exclusive care of the United Postal States Department within Manhasset, New York.

Mr. Figurski attests that *"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 indicate the documents mailed were returned to this office." Mr. Figurski concludes "I reviewed the entire claim for EMM and the standard practices and procedures mentioned in the foregoing paragraphs of this affidavit were followed with respect to the claim file. Applicant's Application for no fault Benefits was not received by RCS within 30-days of the alleged accident."

As to Respondent's defense that the Assignor failed to submit timely notice of claim after a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find the Respondent's proof insufficient to support such a defense.

Mr. Figurski's affidavit attests to the fact that RCS did not receive claimant's NF-2 within 30 days of the alleged accident. Despite the Respondent uploading a letter from Francisco Castillo Law, PC dated 10/20/22 to the Respondent along with the NF-2 I find such proof alone insufficient to support Respondent defense that the Assignor failed to provide timely written notice of loss. 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 to their second defense, Mr. Figurski's Affidavit does not even address the issue of the Applicant's failure to provide timely written proof of claim. The Applicant provides proof of mailing in the form of a mailing log showing the bill in issue was mailed to Enterprise Rental to a PO Box in Kansas City Missouri on 12/28/22 well within 45-days after services were rendered. The Respondent's claim specific denial acknowledges receipt of the bill on 3/9/23. Although Respondent's counsel argued that Mr. Figurski indicates that the mailing address for the Respondent is P.O. Box 5000, Manhasset, NY 11030 and prior to 5/9/19 P.O. Box 541487, Flushing, NY 11354, Mr. Figurski fails to address the denial's acknowledgement that the bill was received. Although Respondent's denial may indicate that the claim was received after the expiration of the 45-day period, it is not the date of receipt which determines whether the submission is timely, but rather the date the claim was mailed. See New York Diagnostic Medical Care, PC v Geico Casualty Ins. Co., 2012 NY Slip Op 50681 (U), 35 Misc. 3d 131(A), 95 NYS 2d 87, 2012 NY Slip Op 50681 (U) (App. Term 9th & 10th Jud Dists 4/10/12). Here the proof provided is sufficient to establish that the bill was mailed to the Respondent in a timely manner. Not having provided sufficient proof to the contrary I find that the Respondent may not rely on its 45-day violation defense.

For the reasons noted above I find for the Applicant in the amended amount of \$2,657.99.

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
	Sky Radiology, PC.	11/28/22 - 12/12/22	\$2,899.62	\$2,657.99	Awarded: \$2,657.99
Total			\$2,899.62		Awarded: \$2,657.99

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/24/2023 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 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.

09/16/2024
(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:
132a633d9cc08a23a0cbc35f46916946

Electronically Signed

Your name: Frank Marotta
Signed on: 09/16/2024