

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

ExpertsRx Pharmacy Inc.
(Applicant)

- and -

Ace American Insurance Company
(Respondent)

AAA Case No.	17-24-1333-9310
Applicant's File No.	23-51448
Insurer's Claim File No.	1M01M012522861
NAIC No.	22667

ARBITRATION AWARD

I, Kent Benziger, 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: D.B.

1. Hearing(s) held on 08/19/2024
Declared closed by the arbitrator on 08/19/2024

Nicole Jones, Esq. from The Morris Law Firm, P.C. participated virtually for the Applicant

Robyn M. Brilliant, Esq. from Robyn M. Brilliant, P.C. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$736.72**, 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

On July 9, 2022, the Assignor/Eligible Injured Party, a 32-year-old male, was involved in a motor vehicle accident. In dispute are two bills for the prescription of medication. On May 16, 2023, the Applicant ExpertRX Pharmacy provided pregabalin (qty 60, \$344.64) and a \$5.00 dispensing fee. On July 5, 2023, the Applicant provided pregabalin (qty 60, \$382.08) and a \$5.00 dispensing fee. The Respondent Ace American Insurance contends it never received the bills prior to the commencement of arbitration and that the claim must be denied based on the 45 day rule. Based on the NF-3s exchanged in this arbitration, the Respondent has submitted an affidavit establishing that the NF-3s were addressed to an incorrect P.O. Box for this department of the third-party administrator, contained the wrong and improper claim number, incorrectly listed the

policyholder and failed to list a policy number and listed the wrong date of accident. The Applicant/Provider stands in the shoes of the Assignor who possessed the correct information as established by the NF-2 and a letter of representation. The Applicant has failed to submit any written reasonable justification for the failure to comply with these requirements.

4. Findings, Conclusions, and Basis Therefor

On July 9, 2022, the Assignor/Eligible Injured Party, a 32-year-old male, was involved in a motor vehicle accident. In dispute are two bills for the prescription of medication. On May 16, 2023, the Applicant ExpertRX Pharmacy provided pregabalin (qty 60, \$344.64) and a \$5.00 dispensing fee. On July 5, 2023, the Applicant provided pregabalin (qty 60, \$382.08) and a \$5.00 dispensing fee.

The Respondent Ace American Insurance contends it never received the bills prior to the commencement of arbitration and that the claim must be denied based on the 45 day rule and that the Respondent submitted no reasonable justification for the failure to comply with this time requirement.

The Applicant's NF-3s were respectively dated June 27, 2023 and August 10, 2023. The notices were addressed to ESIS (No Fault), P.O. Box 5127, Scranton PA 18505-0559 with the accident date of January 25, 2021 and Claim Number 1M01012522861. The Policy Holder is listed as D.B. - the Assignor.

The Respondent has submitted an affirmation from Katie Jonas-Goodlund, a No-Fault adjuster employed by ESIS, a third-party administrator for Ace American Insurance Company, the insurer for Hertz Rental. Ms. Jonas-Goodlund is the No-Fault adjuster assigned to this file. She states that the Assignor was involved in a motor vehicle accident on July 9, 2022 in a Hertz vehicle and the proper claim number of 1M01M01252592B was assigned to this claim. She noted the following:

In its AR-1, Applicant included the bill at issue for date of service 05/16/23 in the amount of \$349.64 and proof of mailing for same in the form of an affidavit of faxing dated 06/27/2. Additionally, the bill lists a mailing address to ESIS at P.O. Box 5127, Scranton, PA 18505-0559.

In its AR-1, Applicant included the bill at issue for date of service 07/05/23 in the amount of \$387.08 and proof of mailing for same in the form of an affidavit of faxing dated 08/10/23. Additionally, the bill lists a mailing address to ESIS at P.O. Box 5127, Scranton, PA 18505-0559.

Had Applicant called me to ascertain the correct mailing address prior to submission of its bills for dates of service 05/16/23 in the amount of \$349.64 and 07/05/23 in the amount of \$387.08, I would have provided same (P.O. Box 6562, Scranton, PA 18505). As set forth above, any mailing of a no-fault claim to ESIS at P.O. Box 5127, Scranton, PA 18505-0559 would have been improper.

Additionally, the bills and affidavits of faxing included in Applicant's AR-1 list an incorrect claim number of "1M01M012522861," which is not the proper ESIS claim number relating to this no-fault claim. The correct no-fault claim number is 1M01M01252592XB. Furthermore, the bills incorrectly list the policyholder as "D. B." and fail to list a policy number.

ESIS received a letter of representation dated 08/31/22 which indicates the correct ESIS no-fault claims address of P.O. Box 6562, Scranton, PA 18505 and the correct claim number of 1M01M01252592X. It is clear that D.B. was aware as early as 08/31/22 of the correct ESIS address for no-fault claims related to this accident (P.O. Box 6562, Scranton, PA 18505) the correct claim number for this accident (1M01M01252592X). As the assignor was aware of the correct address and claim number, and a health care provider "stands in the shoes" of its assignor, Applicant was in possession of the proper address for no-fault claims and claim number prior to the dates of service. A copy of the letter of representation is annexed to Respondent's arbitration submission as Exhibit "2".

Furthermore, Applicant's AR-1 and bills included in the AR-1 list an incorrect date of accident of 01/25/21. The correct date of accident is 07/09/22. As D.B.'s letter of representation dated 08/31/22 clearly indicates the correct date of accident of 07/09/22, it is clear that the assignor and therefore Applicant as assignee was aware of the correct date of accident as of its filing of the AR-1 on 01/25/24. A copy of the letter of representation is annexed to Respondent's arbitration submission as Exhibit "2".

All mail properly addressed to ESIS at P.O. Box 6562, Scranton, PA 18505 is picked up daily by a representative of EDM Group ("EDM"), an agent of ESIS in the area of information management. At the time of receipt of the incoming mail, the representative signs for any certified mail.

Ms. Jonas-Goodlund then stated the practice and procedure for receipt of mail and faxes and stated that above claims were not timely received within 45 days of the dates of service and with no written justification for the failure to comply with that requirement.

A completed proof of claim form is a prerequisite to entitlement to no-fault benefits. See: *Shtarkman v. Allstate Ins. Co.*, 2002 N.Y. Slip Op. 50568(U), 2002 WL 32001277 (App. Term 9th & 10th Jud. Dists. Oct. 28, 2002). Pursuant to the Mandatory Personal Injury Protection provision of the No-Fault regulations (11 NYCRR §65-1.1), all of these forms require a listing of the date of the onset of the injury which is also referred

to as the date of the occurrence or accident. Further the regulations require accurate information as to the claim number, insured and that the injuries arose from an accident covered under the subject policy. *Westchester County Medical Center v. N.Y. Central Mutual Life Ins. Co.*, 262 A.D.2d 553, 555, 692 N.Y.S.2d 665, 667 (2d Dept. 1999). If the above information is not provided, the Applicant must submit written proof providing clear and reasonable justification for the failure to comply with said requirements.

As a finding of fact, the Applicant has failed to establish a prima facie case as to this proof of claim due the extensive incorrect information provided in the NF-3. The incorrect information includes the following as established by Ms. Jonas-Goodlund

- 1) The NF-3s are addressed to an incorrect P.O. Box for mailing for this department of the third party administrator - it was never received at the correct address;
- 2) The NF-3s contained the wrong and improper claim number;
- 3) The NF-3s incorrectly list the name of the policyholder and failed to list a policy number;
- 4) Both the NF-3s and the AR-1 list the incorrect date of accident.

The Respondent has established that through the original NF-2 as well as a letter of representation that the Assignor had the correct information. Any provider suing for compensation by virtue of an assignment from the injured party stands in the shoes of the Assignor and would be deemed to have said information. *Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co.*, 37 Misc.3d 19, 952 N.Y.S.2d 372 (App. Term 2d, 11th & 13th Dists. 2012). In sum, these proof of claims or NF-3s failed to contain the correct information and were not received at the proper P.O. Box for this third-party administrator. The Applicant has failed to submit any written reasonable justification for the failure to comply with these requirements.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.

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 DENIED in its entirety

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

State of NY
SS :
County of Orange

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

09/17/2024
(Dated)

Kent Benziger

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:
8da358d79a8443633016612efeaf2023

Electronically Signed

Your name: Kent Benziger
Signed on: 09/17/2024