American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rockaways ASC Development LLC d/b/a ASC of Rockaway Beach (Applicant)	AAA Case No.	17-24-1343-2099
	Applicant's File No.	TLD24-1066113
- and -	Insurer's Claim File No.	23123480193
	NAIC No.	10914
Unitrin Safeguard Insurance Company (Respondent)		

ARBITRATION AWARD

I, Anthony Kobets, 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

1. Hearing(s) held on 09/25/2024
   Declared closed by the arbitrator on 09/25/2024

   Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

   Arthur DeMartini, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$12,059.52**, was AMENDED and permitted by the arbitrator at the oral hearing.

   At the hearing, Applicant's counsel amended the amount in dispute down to $6506.01 total pursuant to the fee schedule. Accordingly, $6506.01 is the amended amount in dispute herein.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   In dispute are the Applicant's bills totaling $12059.52 for a lumbar spine epidural injection, trigger point injection performed on 12/14/22 and a lumbar discography

performed on the patient (MD) on 1/29/23 as a result of injuries sustained in a motor vehicle accident on October 17, 2022.

Respondent denied the claim based on the Applicants' failure to submit written proof of claim within 45 days after the dates of service. Was the Applicant entitled to reimbursement for the services provided to the EIP?

4. Findings, Conclusions, and Basis Therefor

At the hearing, Applicant's counsel amended the amount in dispute down to $6506.01 total pursuant to the fee schedule. Accordingly, $6506.01 is the amended amount in dispute herein.

The parties' representatives agreed that the 45 day rule was the sole issue in dispute herein.

The EIP (MD) was a 54-year old female pedestrian who was involved in a motor vehicle accident on October 17, 2022. Thereafter on 12/14/22, she underwent a lumbar spine epidural injection and a trigger point injection. On 1/29/23 she underwent a lumbar spine discography performed by the Applicant. Applicants seeks no-fault reimbursement for these services.

A health care provider establishes its *prima facie* entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 742, 774N.Y.S. 2d 564 [2004]; Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

The No-Fault Regulations Mandatory Personal Injury Protection Endorsement states: 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 eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or the other necessary 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.

Bill for date of service 12/14/22 in the amended amount of $1213.08;

Bill for date of service 1/29/23 in the amended amount of $5292.92.

At the hearing, Respondent's counsel argued that the above referenced bills were untimely mailed to the Respondent and received on 6/13/23. Applicant proof of mailing evincing the untimely mailing of this bill to another provider on 1/12/23. The bill was then inexplicably mailed to the Respondent months later. Respondent's counsel argued that Respondent did not receive the disputed bills in a timely manner and that the Applicant did not provide sufficiently persuasive evidence establishing a reasonable excuse or justification for the untimely submission the bills.

Importantly, an applicant establishes its entitlement to No-Fault benefits as a matter of law by demonstrating that the necessary billing documents were mailed to and received by the insurer and that payment of the benefits was overdue. Insurance Law § 5106(a); 11 NYCRR § 65-3.8(a)(1); Countrywide Ins. Co. v. 563 Grand Med., P.C., 50 A.D.3d 313 (1st Dept. 2008); NJ/NY Pain Mgt. v. Allstate Ins. Co., 2014 NY Slip Op 51569(U) (App Term 1st Dept., Nov. 3, 2014). Generally speaking, a letter or notice that is properly stamped, addressed and mailed is presumed to be received by the addressee. News Syndicate Co. v. Gatti Paper Stock Corp., 256 NY 211, 176 NE 169 (NY 1931). The presumption of receipt may be created 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. Nassau Ins. Co v. Murray, 46 N.Y.2d 828, 414 N.Y.S.2d 117 (1978). See New York & Presbyt. Hosp. v Allstate Ins. Co., 29 A.D.3d 547, 2006 NY Slip Op 03558 (2d Dept. 2006); Hospital for Joint Diseases v. Nationwide Mut. Ins. Co., 284 A.D.2d 374, 375 (2d Dept. 2001). Courts have held that it is not the date of the insurer's receipt of a claim form which determines whether the submission of a claim form is untimely, but rather the date of the claimant's submission of the claim form. New York Diagnostic Medical Care, P.C. v. Geico Casualty Ins. Co., 35 Misc.3d 131(A), 951 N.Y.S.2d 87 (Table), 2012 N.Y. Slip Op. 50681(U), 2012 WL 1366750 (App. Term 9th & 10th Dists. Apr. 10, 2012).

Based upon a review of the evidence herein and the arguments of counsel, I find that the Applicant has failed to establish its prima facie entitlement to reimbursement for these claims. I was persuaded by Respondent's proofs that the aforementioned bills were not submitted in a timely manner during the claims process and that the Applicant failed to proffer sufficiently reasonable justification for the initial error in submitting the bills to the wrong carrier or the delay in submitting the bill to Respondent after previously discovering that MVAIC was not the proper carrier. If a claimant's excuse for an untimely proof of claim is that it had been inadvertently submitted to a different carrier, such excuse cannot be excused if there is no proffer of an explanation why that happened. Schoenberg v. N.Y.C. Transit Authority, 39 Misc.3d 128(A), 971 N.Y.S.2d 74 (Table), 2013 N.Y. Slip Op. 50421(U), 2013 WL 1234932 (App. Term 2d, 11th & 13th Dists. Mar. 15, 2013).

Furthermore, an insurer who denies a claim on the basis that it was submitted more than 45 days after the services were rendered and who informs the claimant that late submission of the claim would be excused if reasonable justification for the lateness was provided, is entitled to judgment if the claimant fails to proffer a reason for the late submission. Mount Sinai Hospital of Queens v. Country Wide Ins. Co., 43 Misc.3d 139(A), 992 N.Y.S.2d 159 (Table), 2014 N.Y. Slip Op. 50780(U), 2014 WL 2054261 (App. Term 9th & 10th Dists. Apr. 30, 2014). **Accordingly, the Applicant's $6506.01**

amended claim for dates of service 12/14/22 and 1/29/23 is denied. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

This arbitrator has not made a determination that benefits provided for under Article 51 (the No-Fault statute) of the Insurance Law are not payable based upon the assignor's lack of coverage and/or violation of a policy condition due to the actions or conduct of Assignor. As such and in accordance with the provisions of the prescribed NYS Form NF-AOB (the assignment of benefits), Applicant health provider shall not pursue payment directly from Assignor for services which were the subject of this arbitration, notwithstanding any other agreement to the contrary.

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 Nassau

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

09/25/2024
(Dated)

Anthony Kobets

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:
54baf35c0fa665a2088ca3e8d436720f

Electronically Signed

Your name: Anthony Kobets
Signed on: 09/25/2024