

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Central Supplies of NY Corp
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-23-1299-2301

Applicant's File No. 179.860

Insurer's Claim File No. 18351766

NAIC No. Self-Insured

ARBITRATION AWARD

I, Tracy Morgan, 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: injured person-assignor

1. Hearing(s) held on 09/11/2024
Declared closed by the arbitrator on 09/11/2024

Allen Tsirelman, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Iris Ganjian, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,171.18**, 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 Applicant is the assignee of no-fault benefits from injured person-assignor (MD), a 25 year old male who reported he was involved in a motor vehicle accident on April 26, 2022. Following the accident, the injured person-assignor sought medical treatment and was prescribed various items of durable medical equipment supplied by Applicant June 28, 2022-August 24, 2022. Respondent maintains that it never received Applicant's claims.

The issue presented on this arbitration is whether Applicant demonstrated prima facie submission of its claims to Respondent?

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in ADR Center. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed the relevant exhibits contained in the electronic file maintained by the American Arbitration Association and have considered all of the stipulations and arguments presented by both parties at the hearing of this matter. No witnesses appeared or testified.

There is no evidence on this Record to demonstrate that the Respondent issued payment or any denial for the bills in dispute and there is no evidence indicating that Respondent tolled Applicant's claims. Respondent submitted the Affidavit of Thomas Figurski, No-Fault technical specialist, employed by RCS who handles claims for Respondent. Mr. Figurski attested to the practices and procedures for the receipt of mail concerning No-fault claims. Upon review of the Respondent's file, he concluded that Respondent's standard practices and procedures were followed with respect to this claim and that Respondent never received the bills at issue. Further that prior to May 9, 2019 their mailing address was PO Box 541487, Flushing NY and at all relevant times, their mailing address was PO Box 5000, Manhasset, NY.

In *Viviane Etienne Med Care, PC v Countrywide Ins. Co.*, 25 NY3d 498 (2015) the Court of Appeals determined that "a plaintiff demonstrates prima facie entitlement to summary judgment by submitting evidence that payment of no-fault benefits is overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer. Proof evincing the mailing must be presented in admissible form, including where it is applicable, meeting the business records exception to the hearsay rule." *See also, Westchester Medical Center v Lincoln General Insurance Company*, 60 AD3d 1045, 877 NYS2d 340 (2d Dept 2009); *Westchester Medical Center v Clarendon National Insurance Company*, 57 AD3d 659, 816 NYS2d 759 (2d Dept 2008).

Generally, "proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee" *Matter of Government Empls. Ins. Co. v Morris*, 95 AD3d 887, 2012 NY Slip Op 03448 (2d Dept, 2012). "The presumption 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." *New York and Presbyterian Hospital v Allstate Insurance Company*, 29 AD3d 547 (2d Dept, 2006), *citing Residential Holding Corp. v Scottsdale Ins. Co.*, 286 AD2d 679, 680 (2d Dept, 2001).

Applicant's submission includes Applicant's bills and Affidavits of service. For date of service June 28, 2022, Applicant submitted an Affidavit of Catherine Rodriguez who attested to personally mailing the bill to RCS on July 15, 2022 to 201 Dolson Avenue, Suite A, Middletown, NY 10940. For the remaining dates of service, Applicant submitted separate Affidavits by Alex Rudenok who attested to personally faxing the bills to RCS at fax number (516) 704-2554. The affidavits included copies of the fax transmissions demonstrating that the faxes were successful.

As to date of service June 28, 2022, Respondent did not raise any issues as to the sufficiency of the Rodriguez Affidavit but referred to Mr. Figurski's Affidavit wherein he stated that the mailing address for RCS is a PO Box in Manhasset NY.

There is no evidence presented to dispute that the 201 Dolson Avenue address was a proper address for Respondent. While Mr. Figurski attested that the PO Box Manhasset address was the proper address for RCS, there is nothing to indicate that the 201 Dolson Avenue address is not a proper address for Respondent.

A quick internet search of the 201 Dolson Avenue address reveals that it is an address for Enterprise ELCO. Without proof that the 201 Dolson Avenue address was not a valid address for Respondent on the date the bill was mailed, Respondent's defense of non-receipt cannot be sustained.

For the remaining claims, Respondent argued that faxing claims does not constitute proper submission of claim. I disagree as 11 CRR-NY 65-3.5(k) provides "Every insurer, which writes more than 1,000 motor vehicle liability policies in this State, shall establish procedures for the receipt of all claims, notices and verification, subject to this Part, by facsimile and/or electronic data transmittal."

Respondent did not raise any issues as to the sufficiency of the Rudenok Affidavits and did not confirm or deny that the fax number he attested the bills were faxed to was a good fax number. Moreover, Mr. Figurski in his Affidavit never addressed the Applicant's Affidavit of Faxing and similarly failed to confirm or deny that the fax number listed was a good fax number. Mr. Figurski's affidavit relates only to claims received by mail. He did not discuss any procedure by which RCS receives claims by fax. I am persuaded that Applicant submitted credible proof that these claims were properly submitted to the Respondent and that payment of No-Fault benefits is overdue. Applicant's claim is awarded. It is determined that the bill for date of service June 28, 2022 was received on July 20, 2022 and became overdue 30 days later on August 19, 2022. The remaining claims became overdue 30 days after the dates of faxing. 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.

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
	Central Supplies of NY Corp	08/24/22 - 08/24/22	\$502.63	Awarded: \$502.63
	Central Supplies of NY Corp	08/24/22 - 08/24/22	\$1,150.00	Awarded: \$1,150.00
	Central Supplies of NY Corp	08/05/22 - 08/05/22	\$1,410.85	Awarded: \$1,410.85
	Central Supplies of NY Corp	06/28/22 - 06/28/22	\$1,107.70	Awarded: \$1,107.70
Total			\$4,171.18	Awarded: \$4,171.18

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/19/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where no denial has been issued and no payment has been made, it is clear from the statute that the claim is overdue and interest runs from the thirty first day after the claim was presented to the carrier for payment New York Presbyterian Hospital v. Allstate Insurance Company, 30 AD3d 492, 819 NYS2d 268, 2006 NY Slip Op 04815 (2d Dep't 2006); Hempstead General Hospital v. Insurance Company of North America, 208 AD2d 501, 617 NYS2d 478 (2d Dep't 1994).

It is determined that the bill for date of service June 28, 2022 was received on July 20, 2022 and became overdue 30 days later on August 19, 2022. The remaining claims became overdue 30 days after the dates of faxing.

C. Attorney's Fees

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

As this matter was filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d) 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 dispute, subject to a maximum fee of \$1,360.00."

- 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 Nassau

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

09/26/2024
(Dated)

Tracy Morgan

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:
254fc9fc303a1ff67e9683de40714282

Electronically Signed

Your name: Tracy Morgan
Signed on: 09/26/2024