

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Zwanger-Pesiri Radiology Group LLP
(Applicant)

- and -

Ace American Insurance Company
(Respondent)

AAA Case No. 17-24-1356-4153

Applicant's File No. 181869

Insurer's Claim File No. 189132025002

NAIC No.

ARBITRATION AWARD

I, Marcie Glasser, 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: Claimant

1. Hearing(s) held on 01/22/2025
Declared closed by the arbitrator on 01/22/2025

Michael Spector, Esq. from The Odierno Law Firm P.C. participated virtually for the Applicant

Representative from Broadspire failed to appear for the Respondent

2. The amount claimed in the Arbitration Request, **\$317.73**, 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

This arbitration stems from treatment of Claimant who sustained injuries in a motor vehicle accident on October 31 2019. The issue is whether Applicant has met the burden of proof for submitting bills in the amount of \$317.73 for x-rays of the cervical spine on January 25, 2024 to April 3, 2024.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral

arguments of the party representative. I reviewed the documents contained in the electronic file for both parties and make a decision in reliance thereon.

Despite notification of the scheduled hearing having been provided to Respondent and AAA's attempts to contact Respondent at the time of the hearing, Respondent, did not appear for the scheduled hearing. Of note, following the closing of the hearing, Respondent, via its third party administrator, Broadspire, sent an email to AAA stating that the PIP is exhausted. There are no documents in the evidentiary record to support policy exhaustion.

Respondent does not have any submissions in the evidentiary record other than an ISO Report which notes Match #1 Broadspire Services and Match #2 MVIAC.

Applicant submitted a check from Broadspire, the third party administrator for the carrier, for date of service April 8, 2024 which is subsequent to the dates of service in issue.

The issue is whether Applicant has met the burden of proof for submitting bills in the amount of \$317.73 for dates of service January 25, 2024 to April 3, 2024.

Applicant submitted NF-3 forms for x-rays of the cervical spine for dates of service January 25, 2024, February 23, 2024 and April 3, 2024, at \$105.91 each, for a total of \$317.73.

No-Fault Regulation, as codified in 11 NYCRR 65-3.8(a), states as follows: "*Payment or denial of claim (30 day rule) (1) No-Fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all the relevant information requested pursuant to section 65-3.5 of this subpart.*"

While the NF-3 forms note Broadspire, there is no proof of mail, proof of fax or electronic submission of the bills to Broadspire.

I find Applicant has not established prima facie showing of their entitlement to reimbursement by submitting evidentiary proof that the prescribed statutory billing form had been mailed and received by Respondent and that payment of no-fault benefits was overdue. *See, Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). A Claimant's prima facie proof of claim for no-fault benefits must demonstrate that the prescribed claim forms were mailed to and received by the insurer and are overdue. *Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, 506, 14 N.Y.S.3d 283, 290 (2015). Applicant has not submitted anything to constitute sufficient proof of sending the bills to Broadspire, the third party administrator or the carrier or that the bills were received.

An arbitrator can dismiss a case without prejudice when a party has failed to establish a prima facie case, but it appears that proof which would support a prima facie case is available. *Acuhealth Acupuncture, PC v. Country-Wide Ins. Co.*, 48 Misc.3d 1224(A), 2015 N.Y. Slip Op. 51256(U), 2015 WL 4965445 (Sup. Ct. Kings Co., Ellen M. Spodek, J., July 24, 2015). The evidence submitted is insufficient to show that the

specific bills at issue were mailed to Respondent and, therefore, it has not been shown that payment or denial was ever overdue prior to commencement of arbitration. Since there was no outright denial of receipt of the bills submitted by Respondent, I am dismissing the claims without prejudice for this reason as well. The claim is dismissed without prejudice.

Accordingly, in light of the foregoing, based on argument of counsel and after thorough review and consideration of all submissions, the claim is dismissed without prejudice.

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 DISMISSED without prejudice

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

State of FL

SS :

County of Palm Beach

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

01/25/2025
(Dated)

Marcie Glasser

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:
3ddf4886772859388f49de25521cb5f5

Electronically Signed

Your name: Marcie Glasser
Signed on: 01/25/2025