

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Psychology 21, PC
(Applicant)

- and -

New York Marine & General Insurance
Company
(Respondent)

AAA Case No. 17-24-1364-8870
Applicant's File No. NF-814596-1580328
Insurer's Claim File No. CAPX24002915
NAIC No.

ARBITRATION AWARD

I, Heidi Obiajulu, 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 Party

1. Hearing(s) held on 03/28/2025
Declared closed by the arbitrator on 03/28/2025

Jeremy Davis, Esq. from Sanders Grossman Aronova PLLC participated virtually for the Applicant

non-appearance from New York Marine & General Insurance Company failed to appear for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,075.45**, 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 seeks reimbursement of charges for a psychological diagnostic evaluation [CPT code 90791], a neurobehavioral status exam- initial hour [CPT code 96116], four hours of psychological testing [CPT code 96101, 4 units], and two hours of neuropsychological testing [CPT code 96118, 2 units] performed on 06/18/24, following a motor vehicle accident on 05/31/24. The respondent did not pay or deny the claim or submit evidence to show that its 30-day period was tolled. The respondent did not submit any arbitration submissions.

4. Findings, Conclusions, and Basis Therefor

The decision is based on the documents in the Modria ADR Electronic Case folder maintained by the American Arbitration Association (hereafter referred to as AAA) as of the hearing.

The respondent did not appear for the arbitration or seek an adjournment of the case. Also, the respondent did not submit any arbitration submission despite receiving a Conciliation Initiation letter, dated 09/19/24, advising it to submit its position in writing along with supporting documentation and a copy of the same to the applicant party by Monday, October 21, 2024.

According to the Timeline of the ECF, on 10/07/24, a Defense File Reminder was sent to the respondent. Again, on 10/21/24, a Defense File Reminder notification was sent to the respondent.

On 11/05/24, a notification was again sent to the respondent regarding the claim.

On 11/11/24, an AAA employee indicated "additional verification is needed."

On 12/05/24, the AAA employee indicated that the respondent failed to submit arbitration submissions. The case was then escalated and scheduled for a hearing on 03/28/25.

On 01/06/25, AAA sent the hearing notice to the respondent, indicating that a hearing was scheduled for 03/28/25.

In light of the above, I find the respondent received notice of the hearing, per 11 NYCRR section 65-4.5(a).

Under 11 NYCRR section 65-4.5(p), the arbitration may proceed in the absence of any party who, after due notice, failed to be present or fails to obtain a postponement or adjournment.

The hearing was held.

The applicant, as assignee of the Injured Party, seeks reimbursement, with interest and counsel fees, under the No-Fault Regulations, for a psychological diagnostic evaluation [CPT code 90791], a neurobehavioral status exam- initial hour [CPT code 96116], four hours of psychological testing [CPT code 96101, 4 units], and two hours of neuropsychological testing [CPT code 96118, 2 units] performed on 06/18/24, in the amount of \$2075.45.

Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., an insurer is obligated to

reimburse the Injured Party (or assignee) for all reasonable and necessary medical expenses arising from the use and operation of the insured vehicle.

This case arose from a motor vehicle accident on May 31, 2024, in which the Injured Party (LS), a then 35-year-old male sustained multiple injuries, including to the back and psychological injury, while occupying the insured vehicle as a front seat passenger when it was hit by the adverse vehicle. Immediately after the accident, he went home.

Two days later, the Injured Party went to a medical clinic and started receiving medical treatment.

On 06/18/24, Lisa Stahler, LMSW, under the supervision of Dana T. Savidge, Psy.D, performed the disputed psychological diagnostic evaluation, the neurobehavioral status exam, and the psychological and neuropsychological testing on the Injured Party.

After that, the applicant submitted its claim form to the respondent, seeking reimbursement of its claim. The applicant submitted proof of mailing consisting of an affirmation by Jordan Jones, who affirmed that on 07/18/24, she deposited the envelope addressed to the respondent and that the envelope was addressed as follows:

"[Applicant]- C/o Gallagher Bassett service Branch 266, P.O. Box 293 Clinton Iowa, 52733."

Notably, the address is different than the address listed for the respondent in the applicant's AR-1. The applicant listed the same address as that used by AAA for the mailing of the hearing notice, which is:

"[Applicant]

412 Mount Kemble Avenue

Suite 300C

Morristown, NJ 07960"

At the arbitration hearing, the applicant's attorney argued that the applicant mailed the claim form to the respondent's third-party administrator (TPA), Gallagher Bassett, per oral instructions received. He read a transcript of the oral instruction received by a telephone call from that TPA. Allegedly, the TPA employee instructed the applicant's attorneys to submit all claims to "Gallagher Bassett Service Branch 266, P.O. Box 293 Clinton Iowa, 52733." Consequently, the attorney argued that the applicant's proof of mailing created a presumption that the respondent received the claim. Since more than 30 days have expired since the mailing of the claim form and the respondent did not submit a denial, pay the claim, or send verification requests, the attorney argued the claim is due and owing.

As indicated above, the respondent did not submit any arbitration submissions or appear at the hearing.

The sole question is whether the applicant established its prima facie case.

An applicant establishes its prima facie case with the submission of its claim form outlining proof of the fact and amount of loss sustained and evidence demonstrating the respondent presumably received the applicant's claim form and failed to deny the claim within the requisite 30 days of its receipt of the claim or issued timely denial of claim forms that were conclusory, vague or without merit as a matter of law. See Insurance Law section 5106 [a]; Viviane Etienne Medical Care, PC v. County-Wide Ins. Co 25 N.Y.3d 498, (NY, June 10, 2015), Westchester Medical Center v. Nationwide Mut. Ins. Co., 78 A.D.3d 1168, (N.Y.A.D. 2nd Dept., November 30, 2010).

Where there have been no timely verification requests, "*a first-party no-fault cause of action accrues 30 days after the insurer's receipt of the claim.*" DJS Med. Supplies, Inc. v. Clarendon Natl. Ins. Co., 32 Misc 3d 129 [A], (App. Term, 2nd Dept, 11th & 13th Dist., 2011).

Generally, "*proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee*" (New York & Presbyt. Hosp. v Allstate Ins. Co., 29 AD3d 547, (N.Y.A. D., 2nd Dept., May 02, 2006). "*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*" (Residential Holding Corp. v Scottsdale Ins. Co., 286 AD2d 679, 680 (N.Y.A.D., 2nd Dept., September 10, 2001).

In this case, the applicant's attorney vehemently argued that it submitted sufficient proof of mailing of the applicant's claim form and that the affirmation of mailing created a presumption of mailing.

Although the format of the affirmation of mailing appears to be okay, there is a question regarding the address used by the applicant.

Notably, a Google search of the above address used by the applicant shows the P.O. Box as "2934" and not "293." The remainder of the address is correct.

It is further noted that the applicant's attorney could not swear that the transcription of the phone message of the Gallagher Bassett employee regarding where to send claims was accurate.

I find that given the above discrepancy in the P.O. Box, I cannot find that the applicant's proof of mailing created a presumption of receipt.

Considering the totality of the evidence before me, it appears that the transcription of the message by the respondent's TPA was inaccurate in that it left off the last digit of the P.O. Box, the "4."

Finally, the notation by the AAA employee on the ECF Timelines [on 11/11/24] that stated "additional verification is needed" does raise an issue regarding whether the respondent's TPA received the claim form. I find that this comment alone is insufficient to establish that this claim form was received by the applicant. Possibly, the TPA indicated additional verification of the claim was needed once it heard of the claim by the AAA employee. **[Had the notes of the AAA employee listed on the ECF Timeline on 11/11/24 unequivocally indicated that the respondent received the claim from the applicant and was seeking verification, the claim most likely would have been awarded because I would have relied on that statement as evidence of the respondent's receipt of the claim. The respondent is obligated to submit evidence of the tolling of its 30-day period to pay or deny a claim. A statement alone would be insufficient.]** I find the statement, "additional verification is needed," alone does not demonstrate the respondent received the claim from the applicant.

Consequently, for the above reasons, I find the applicant failed to establish its prima facie case because I cannot find that the respondent or its agent presumably received the claim.

The applicant should immediately resend its claim form to the TPA at both P.O. Box 2934 and P.O. Box 2831 or the new the P.O. Box given in the oral instructions listened to during the arbitration regarding submitting claims. The TPA apparently has a new P.O. Box for the receipt of claims.

Accordingly, for the above reasons, I find the applicant's 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 NJ

SS :

County of Union

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

03/31/2025

(Dated)

Heidi Obiajulu

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:
aea28dbc444ca51a9807a5781f52d0e0

Electronically Signed

Your name: Heidi Obiajulu
Signed on: 03/31/2025