American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CH Physical Therapy PC (Applicant)	AAA Case No.	17-25-1382-9417
	Applicant's File No.	NA
- and -	Insurer's Claim File No.	20-57W8-02L
State Farm Fire & Casualty Company (Respondent)	NAIC No.	25143

ARBITRATION AWARD

I, Gregory Watford, 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 (GJ)

1. Hearing(s) held on 08/06/2025
   Declared closed by the arbitrator on 08/06/2025

   Usman Nawaz from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

   Taylor Grogan from Siegel & O'Leary LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$817.52**, 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 dispute arises from the underlying automobile accident of October 19, 2023, in which the Assignor, then a 54-year-old female, was a driver. As result of the accident, Assignor complained of multiple injuries. Thereafter, Assignor sought private medical attention where she was recommended to begin receiving conservative care treatments, including physical therapy treatments.

   In dispute in this case are four (4) bills related physical therapy treatment services provided to Assignor from 11/8/23 - 12/27/23. Applicant timely submitted the bills to Respondent for payment in an amount totaling $817.52. Respondent timely denied payment of the bills due to Assignor's failure to appear at examination under oath (EUO) appointments scheduled for 12/27/23 and 1/18/24.

At the hearing, when asked, Respondent did not raise any fee schedule objections to the amounts billed by Applicant.

The issues to be decided in this case are:

Whether Applicant established entitlement to No-Fault compensation for physical therapy treatment services provided to Assignor.

Whether Respondent established that Applicant is not entitled to compensation due to Applicant's alleged breach of policy.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions and documents contained in the American Arbitration Association's ADR Center Electronic Case File (ECF). This matter was decided based upon the submissions of the parties as contained in the ECF, as well as upon the oral arguments of the parties at the time of the hearing. All documents contained in the ADR folder that were submitted at least 30 days prior to the hearing date are hereby incorporated into this hearing and were considered in reaching my findings. These submissions constitute the record in this case. Evidence relating to the issues of fraud, staged accidents, fee disputes, proof of paid claims, and policy exhaustion need not be submitted at least 30 days prior to the hearing date. There were no witnesses.

Pursuant to Insurance Law § 5106(a) and the Insurance regulations, an insurer must either pay or deny a claim for motor vehicle no-fault benefits, in whole or in part, within 30 days after an applicant's proof of claim is received (*see* Insurance Law § 5106[a]; 11 NYCRR 65-3.8[c]; *see also* 11 NYCRR 65-3.5). Infinity Health Products, Ltd. v. Eveready Ins. Co., 67 A.D.3d 862, 864, 890 N.Y.S.2d 545, 547 (2d Dept. 2009). 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's proof is also in Respondent's denials, which acknowledged receipt of the bills.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim. Viviane Etienne Med Care, PC v. Countrywide Ins. Co., *Id*. Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See Citywide Social Work & Psych. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004, NY Slip Op 24034 (Civ. Ct., Kings County 2004).

EUO No Show

It should be noted that the sufficiency of Respondent's defense has previously been addressed by this arbitrator in a linked award under AAA case # 17-24-1351-6832, dated 12/30/24. In the linked award, this arbitrator found in favor of Respondent. Addressing the sufficiency of Respondent's evidence, this arbitrator opined:

"The 30-day period in which to either pay or deny a claim is extended where the insurer makes a request for additional verification within the requisite 15-[business] day time period (see Montefiore Med. Ctr. v Government Empls. Ins. Co., 34 AD3d 771; New York & Presbyt. Hosp. v. Allstate Ins. Co., 31 AD3d 512)." Kingsbrook Jewish Medical Center v. Allstate Insurance Co., 61 A.D.3d 13, 17-18, 871 N.Y.S.2d 680, 683 (2d Dept. 2009). "If the requested verification is not received within 30 days, the insurer must send a follow-up letter within 10 days thereafter (see 11 NYCRR 65.15[e][2])." New York & Presbyterian Hospital v. American Transit Insurance Co., 287 A.D.2d 699, 700, 733 N.Y.S.2d 80, 81-82 (2d Dept. 2001).

Examinations Under Oath (EUO) are considered to be part of an insurer's entitlement to "additional verification" following receipt of a provider's statutory claim forms. Sure Way NY, Inc. v. Travelers Ins. Co., 56 Misc.3d 289, 292 (Civ. Ct. Kings Co. 2016).

It is well established that the failure to comply with the standard policy provision requiring disclosure by way of submission to an EUO as often as may be reasonably required, as a condition precedent to performance of the promise to indemnify, constitutes a material breach of the policy, precluding recovery of the policy proceeds (citations omitted). (IDS Prop. Cas. Ins. Co. v. Stracar Med. Services, P.C., *116 A.D.3d 1005, 1007 [App. 2nd Dept. 2014], quoting Bulzomi v. New York Cent. Mut. Fire Ins. Co., 92 A.D.2d 878, 878 [2nd Dept.1983].*

An insurance company which establishes that it twice duly demanded an examination under oath from the assignor/assignee, that the assignor/assignee twice failed to appear and that [it] issued a timely denial of the claims arising from the assignees' provision of medical services to the assignors establishes its prima facie entitlement to judgment as a matter of law. IDS Prop. Cas. Ins. Co. v. Stracar Med. Services, P.C., supra, at 1007, quoting Interboro Ins. Co. v. Clennon, 113 A.D.3d 596, 597 [2nd Dept. 2014]; citing Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.3d 720, 721 [2nd Dept. 2006].

The insurer must establish that it timely and properly mailed its EUO scheduling letters and its denial of claim forms, which denied the claims on the ground that plaintiff had failed to appear at duly scheduled EUOs. Bay LS Med. Supplies, Inc. v. Allstate Ins. Co., 50 Misc. 3d 147(A) (App Term 2016), citing St. Vincent's Hosp. of Richmond v. Government Empls. Ins. Co., 50 A.D.3d 1123 [2nd Dept. 2008]. Evidence in the form of an affidavit of an employee with knowledge of the insurance company's standard office practices or procedures designed to ensure that items were properly addressed and mailed may be used to establish the mailing of required documents. St. Vincent's Hosp. of Richmond v. Govt. Employees Ins. Co., 50 A.D.3d at 1124, citing New York & Presbyt. Hosp. v. Allstate Ins. Co., 29 A.D.3d 547 (2nd Dept. 2006).

An attorney or individual who would have conducted the EUO if the assignor/assignee had appeared certainly is in a position to state that the assignor/assignee ... did not ... appear in his office on the date[s] indicated as directed in the notice and did not otherwise appear in his office on the date indicated. Hertz Corp. v. Active Care Med. Supply Corp., 124 A.D.3d 411, 411 (2nd Dept. 2015).

According to the NF-10, Respondent received the bill on 1/2/24. In the ECF are the EUO scheduling letters. The initial EUO scheduling letter is dated 11/20/23 for the 12/27/23 EUO. There is a follow-up EUO scheduling letter dated 12/28/23 for the 1/18/24 EUO.

Also in the ECF is a delay letter addressed to Applicant, dated 1/15/24, advising Applicant that the claim was being delayed pending outstanding verification which included the EUO of Assignor.

Attached to each EUO scheduling letter is an affidavit of service from Jennifer Klapman who attested that on 11/20/23 and 12/28/23, she mailed the aforementioned EUO scheduling letters to Assignor's listed addresses in Baltimore Maryland and Bronx New York.

It should be noted that Respondent also uploaded an affirmation of Richa Sinha, Claims Specialist employed by Respondent company discussed Respondent's investigation into Assignor's accident and related claims. Based upon this investigation, Respondent determined that an EUO of Assignor was required to investigate discrepancies and "red flags." Specialist Sinha noted that Assignor insured her vehicle with Respondent at an address located in Baltimore Maryland. However, according to the police accident report, Assignor produced a New York State Driver's License and Vehicle Registration bearing a Bronx, New York address.

It should also be noted that Respondent's investigation revealed that the Baltimore, Maryland address on record for Assignor was a "Flashmail Box & Ship" store located in a strip mall. Respondent also provided a copy of the envelope, post marked 1/5/24, where Respondent mailed the EUO scheduling letter and was "Returned to Sender - Attempted not Known, Unable to Forward."

Respondent also uploaded the transcripts for each EUO date in dispute which demonstrated that Assignor failed to appear at the aforementioned scheduled EUOs. Respondent also provided the affirmations of counsel Kevin O'Leary who affirmed that he was present at the EUO locations and had personal knowledge of Assignor's failure to appear at the two (2) scheduled EUOs.

Applicant's counsel did not argue that the EUO scheduling letters were not timely or that Assignor did in fact appear at one of the scheduled EUOs. Applicant's counsel did not have any explanation for Assignor's failure to appear. However, Applicant's counsel raised several arguments regarding the sufficiency mailing the EUO scheduling letters.

Comparing the relevant evidence and arguments presented by both parties against each other, I am persuaded by the Respondent's arguments and evidence regarding the sufficiency of Respondent evidence that Assignor failed to appear at the scheduled EUOs.

Generally, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee. New York and Presbyterian Hospital v. Allstate Insurance Company, 29 A.D. 3d 547 (N.Y. App. Div. 2nd Dept. 2006) quoting, Matter of Rodriguez v Wing, 251 A.D.2d 335 (App. Div. 2nd Dept. 1998). "The presumption may be created by either proof of actual mailing or proof of the 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 AD 3d 547 quoting Residential Holding Corp. Scottsdale Insurance Company, 286 A.D. 2d 679 (App. Div. 2nd Dept. 2001).

It should be noted that the NF-3 listed Assignor's Bronx address and apartment number. Similarly, the DME prescription and the delivery receipt, bearing a signature, also listed the Assignor's Bronx address. Likewise, the Assignment of Benefits (AOB) and the DME Agreement Form in the submission listed Assignor's Bornx address. Moreover, the DMV documents presented at the time of the accident (Driver's License and Vehicle Registration) listed Assignor's Bronx address. All of these documents listed the Bronx address provided by Assignor to Applicant and the police officers who responded and investigated the accident.

Based upon the foregoing, I find that Respondent has presented sufficient and credible evidence to benefit the presumption of receipt of the EUO scheduling letters by Assignor. New York and Presbyterian Hospital v. Allstate Insurance Company. Additionally, I find that Respondent has provided sufficient evidence to sustain its burden of proof that the Assignor breached a condition precedent to coverage by failing to appear at the properly scheduled and noticed EUOs, thereby resulting in a lack of coverage.

Since Assignor violated a condition precedent to coverage, Applicant is not entitled to any further compensation. See Stephen Fogel Psychological, P.C. v Progressive Cas. Ins. Co., 35 AD3d 720 [2006].

There is a split between the 1st and 2nd Departments as to whether or not a defense based upon a breach of a condition precedent to coverage (such as IME and EUO no-shows) is subject to the preclusion rule based upon the 2nd Department case: Westchester Medical Center v. Lincoln General, 2009 NY Slip Op 02589 (App. Div. 2nd Dept, 2009) c.f. Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC, 82 AD3d 559 , 560 [App. Div. 1st Dept 2011], lv denied 17 NY3d 705 [2011]). Arbitrators are also split on this issue.

Though I consider the issue unsettled and until such time that the issue is decided by the Court of Appeals or guidance is provided by the New York State Department of Financial Services, I follow Unitrin, supra, especially here, where the bills were properly and timely denied herein, though for various reasons but based on Unitrin, supra, the policy violation defense voids the policy ab initio.

Moreover, the coverage defense applies to any claim and is not determined on a bill-by-bill basis. Unitrin Advantage Ins. Co. v Dowd 2021 NY Slip Op 03012, 194 AD3d 507 (App. Div. 1st Dept. 2021) citing PV Holding Corp. v AB Quality Health Supply Corp., 189 AD3d 645, 646 [App. Div. 1st Dept 2020]). (Assignor's failure to appear at that EUOs voided the policy ab initio as to all claims.)

Consequently, Applicant's claim is denied."

At the hearing in the instant matter, Applicant's counsel raised an argument regarding the location of the EUO being scheduled in Long Island.

It should be noted that there are no documents in the ECF which demonstrated that anyone objected to the location of the EUO. Moreover, the EUO scheduling letters advised Assignor that she would be reimbursed for the reasonable cost of transportation in order to comply with the EUO request. Respondent's letters stated: "Kindly be advised that we have no problem changing the date, time and/or location of the examination, based on your reasonable request for same." Moreover, Respondent's letter advised Assignor that the EUO can be conducted via Zoom video conference.

Furthermore, Applicant's counsel did not have any explanation for Assignor's failure to appear.

Based upon the above, I did not find counsel's arguments persuasive.

Accordingly, I uphold my prior award along with the findings of fact and conclusions of law contained therein and adopt them in the instant matter.

Therefore, Applicant's claim 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, including medical necessity, are held to be moot, without merit, 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 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 Westchester

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

09/04/2025
(Dated)

Gregory Watford

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:
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Electronically Signed

Your name: Gregory Watford
Signed on: 09/04/2025