CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS PART 41

Index No. CV-710964-21/KI

SILVA ACUPUNCTURE, P.C.,
A/A/O, ALAMEDA, GUILLERMINA,

Plaintiff,

-against-

TRAVELERS INSURANCE,

Defendant.

Motion Cal. # 148-149
Motion Seq. #1 & 2

DECISION AND ORDER

Recitation, as required by CPLR § 2219(a) of the papers considered in review of this Motion:

Papers:

D's Motion for Summary Judgment……...1
P's X-M for Summary Judgment……2

Upon the foregoing cited papers, the Decision/Order on Defendant's and Plaintiff's Motions for Summary Judgment are decided as follows: Defendant's Motion is DENIED. Plaintiff's Motion is GRANTED.

Plaintiff established its prima facie case as to the timely and proper mailing of the bills to the Defendant and that Defendant having received Plaintiff's bills failed to timely and properly pay or deny the bills in question and that Defendant's denials are defective.

Initially, as to Cause of Action # 2 for DOS 7/15/20-7/21/20 Defendant fails to address it in their papers and as such Plaintiff's prima facie is unrebutted and Plaintiff is entitled to JUDGMENT.

For Causes of Action 1 and 3, Defendant concedes the receipt of Plaintiff's bills and alleges that it issued verification requests. In opposition, Plaintiff established and Defendant concedes that Plaintiff responded to Defendant's verification requests. However, despite Plaintiff's responses and pursuant to Insurance Law § 5106, Defendant was required to make a determination based on the verification responses. Pursuant to N.Y. Ins. Law § 5106(a), "Payments of first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained. *If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty days after such proof is supplied*." (Emphasis added). As stated in the August 22, 2006 Opinion by the Office of General Counsel of the New York State Insurance Department, now, Department of Financial Services ("DFS"), "it should be noted that *where a claimant supplies at least a part of the information requested* and the insurer is able to make a determination as to the sufficiency of proof as to part of the claim, Section 5106(a), as referenced above, requires the insurer to make a determination to pay or deny the part of the claim within 30 days after receipt of the requested verification." (Emphasis added).

In this case, Defendant having received the verification responses, Defendant did not articulate whether it was able to make a full or partial determination as to the sufficiency of proof as to part or whole of the claim, and instead of issuing a denial or a payment if Defendant was or was not satisfied the response; Defendant instead issued the same identical verification request stating that Plaintiff's responses are not satisfactory. In Mount Sinai Hosp. v. Auto One Ins. Co., the hospital informed the insurance carrier that it was not in possession of certain requested documentation and was not authorized to release others. 121 A.D.3d 869 (2d Dep't, 2014). Nevertheless, the Second Department held that the insurance carrier "failed to demonstrate its prima facie

entitlement to judgment as a matter of law, since the record reveals that the hospital replied to the verification request with respect to those records in the hospital's possession that it alleged it was authorized to release." Id. at 871. *See also*, Burke Physical Therapy v. State Farm Mut. Auto. Ins. Co., 72 Misc.3d 1206(A) (Civ. Ct., Kings County, 2021) (Mallafre Melendez, J.); Pro-Align Chiropractic, P.C. v. Travelers Property Casualty Ins. Co., 58 Misc.3d 857 (Dist. Ct., Suffolk County, 2017) (Mathews, J.). Defendant then issued a late denial. *See* Neptune Med. Care, P.C. v. Ameriprise Auto & Home Ins., 48 Misc.3d 139(A) (App. Term, 2d Dep't, 2015); *See also* Beacon Acupuncture, P.C. v. Hertz Claim Mgt., 66 Misc.3d 130(A) (App. Term, 2d Dep't, 2019); Bronx Med. Diagnostic, P.C. v. Hereford Ins. Co., 65 Misc.3d 146(A) (App. Term, 2d Dep't, 2019); A.C. Med., P.C. v. Ameriprise Ins. Co., 54 Misc.3d 127(A) (App. Term, 2d Dep't, 2016); Daily Med. Equip. Distrib. Ctr., Inc. v. MVAIC, 53 Misc.3d 148(A) (App. Term, 2d Dep't, 2016); Renelique v. Utica Mut. Ins. Co., 53 Misc.3d 141(A) (App. Term, 2d Dep't, 2016); Great Health Care Chiropractic, P.C. v. Travelers Ins. Co., 49 Misc.3d 145(A) (App. Term, 2d Dep't, 2015).

Any argument by Defendant that the time to pay or deny the claims had otherwise been tolled for other verification, here, in the form of the identical verification request that has already been responses, are without merit. As this Appellate Term held in Neptune, "even if defendant had tolled the 30-day period within which it was required to pay or deny the bills at issue, by timely requesting verification pursuant to 11 NYCRR 65-3.8 (a), [ ] the Regulations do not provide that such a toll grants an insurer additional opportunity to make requests for verification that would otherwise be untimely." 48 Misc.3d 139(A). In other words, an initial timely verification, does not extend the time for an insurer to make additional verification requests. Any additional verification requests must still be timely under the Regulations. As the Appellate Division recognized long ago, "[t]he No-Fault Law is in derogation of the common law and so *must be strictly construed*." Presbyterian Hosp. v. Atlanta Casualty Co., 210 A.D.2d 210, 211 (2d Dep't, 1994) (emphasis added). *See also* Presbyterian Hosp. v. Maryland Cas. Co., 226 A.D.2d 613 (1996); Bennett v. State Farm Ins. Co., 147 A.D.2d 779 (3d Dep't, 1989); East Acupuncture, P.C. v. Allstate Ins. Co., 15 Misc.3d 104 (App. Term, 2d Dep't, 2007), *affirmed*, 61 A.D.3d 202 (2d Dep't, 2009). As the Court of Appeals acknowledged on this point, "[t]o string out belated and extra bites at the apple is, on the present state of the law, inherently contradictory and unfounded under the statutes, regulations and policies that pertain to and govern this dispute, and we should not countenance such practices on the state of this record and these regulations and statutes." Presbyterian Hosp. v. Md. Cas. Co., 90 N.Y.2d 274, 286 (1997). Allowing Defendant to delay the reimbursement of the Plaintiff even partially, is not permitted by the Insurance Law and the applicable DFS Regulations and would thus be unfounded and should not be sanctioned, as it unmistakably constitutes belated and extra bites at the apple by the Defendant.

As such, Plaintiff is to enter judgment for $3,392.76 plus statutory interest, statutory attorney's fees, costs and disbursements.

This constitutes the decision and order of the Court.

Counsel for Plaintiff – Printed Name and Initials: Richard Rozhik, Esq.

Counsel for Defendant – Printed Name and Initials: Albert Galatan, Esq

Date: August 1, 2024
Brooklyn, New York

Hon. Sandra E. Roper
Judge, Civil Court, Kings County

ENTERED - Kings Civil Court
8/2/2024, 8:10:36 AM