

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: CIVIL PART 3**

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NAQIY MEDICAL SERVICES, P.C. ASSIGNEE OF
TEG ANDREWS,

Plaintiff,

against

INDEX NO. CV-018970-11

Present:

Hon. Fred J. Hirsh

21ST CENTURY INSURANCE COMPANY,

Defendant.
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The following named papers numbered 1 - 4
submitted on this motion on January 27, 2012

	Papers Numbered
Notice of Motion and Affidavits Annexed	1-2
Order to Show Cause and Affidavits Annexed	
Affirmation in Opposition	3
Replying Affidavits	4

Defendant moves for summary judgment in this action to recover first party no-fault benefits.

Plaintiff Naqiy Medical Services, P.C. sues as assignee of Teg Andrews to recover first party no-fault benefits for medical testing provided to Andrews on March 11, 2010.

On March 1, 2010, Andrews submitted to an Independent Chiropractic Examination conducted by Antoinette Perry, D.C. Dr. Perry issued an IME report dated March 1, 2010 in which she opined that Andrews need no further chiropractic and/or acupuncture treatment or testing for the injuries sustained as a result of the December 19, 2009 motor vehicle accident. Her opinion was based upon her chiropractic exam in which she found neurological deficits and which in all other respects was within normal limits.

The claim was submitted received by the defendant on April 15, 2010 and was denied by denial dated May 4, 2010.

Plaintiff asserts the proof submitted in opposition to the motion fails to establish timely mailing of the denial and the IME report is insufficient to establish a lack of medical necessity.

Contrary to plaintiff's assertion, actual mailing of the specific denial is not required to prove mailing. A no-fault insurance carrier may prove timely mailing of a denial by submitting an affidavit from an employee with knowledge of its office practice or procedures designed to ensure the denial was timely generated, addressed and mailed. St. Vincent's Hosp. of Richmond v. Government Employees Ins. Co., 50 A.D.3d 1123 (2nd Dept. 2008).

Plaintiff's repeated and continued citation to and reliance upon cases decided prior to *St. Vincent's* is misplaced and reaching the point of becoming sanctionable. The court notes plaintiff has not cited a single case on the issue of mailing decided subsequent to *St. Vincent's*.


St. Vincent's was a major change in the proof required of an insurer to prove timely mailing of a denial. In order to overcome the presumption of mailing, plaintiff must establish the person making the affidavit was not employed by the insurer when the denial was issued and the insurer did not establish actual mailing of the specific denial or its standard office practices and procedures for mailing denials at the pertinent time. South Nassau Orthopedic Surgery and Sports Medicine, P.C. v. Auto One Ins. Co., 32 Misc.3d 129(A) (App.Term 2nd, 11th & 13th Jud. Dists.); Friendly Physicians, P.C. v. Geico Ins. Co., 29 Misc.3d 128(A) (App.Term 2nd, 11th & 13th Jud. Dists. 2010); and Points of Health Acupuncture, P.C. v. Geico Ins. Co., 25 Misc.3d 140(A) (App.Term 2nd, 11th & 13th Jud. Dists. 2009). The person making the affidavit on behalf of defendant was employed by the insurer or its predecessor at the time the denial was prepared and established the insurer's standard office practices and procedures for mailing denials.

In all other cases where mailing has been contested, the Appellate Courts have found proof of mailing to be satisfactory. The Appellate Term has found proof of mailing sufficient even when confronted with an affidavit from plaintiff's medical biller denying receipt of verification requests. Pomona Medical Diagnostic, P.C. v. Travelers Ins. Co., 31 Misc.3d 127(A) (App.Term, 2nd, 11th & 13th Jud. Dists. 2011).

The IME report was sufficient to establish lack of medical necessity. Plaintiff offered no evidence in admissible form meaningfully contesting or challenging the opinions of the chiropractor who performed the IME. Bath Medical Supply, Inc. v. New York Central Mut. Fire Ins. Co., 30 Misc.3d 137(A) (App.Term 2nd, 11th & 13th Jud. Dists. 2011); and Vincent Medical Services, P.C. v. Geico Ins. Co., 29 Misc.3d 141(A) (App. Term 2nd, 11th & 13th Jud. Dists. 2010).

For the foregoing reasons, defendant's motion for summary judgment is granted.

SO ORDERED:



Hon. Fred J. Hirsh
District Court Judge

Dated: March 19, 2012

cc: Baker, Sanders, Barshay, Grossman,
Fass, Muhlstock & Neuwirth
Law Offices of Bryan M. Rothenberg