American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lenox Hill Radiology & Medical Imaging Associates PC (Applicant)	AAA Case No.	17-16-1050-7670
	Applicant's File No.	A11705
	Insurer's Claim File No.	LA000-032591033-01
- and -	NAIC No.	36447
Liberty Mutual Insurance Company (Respondent)		

ARBITRATION AWARD

I, Bernadette Connor, 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

1. Hearing(s) held on 02/07/2019
   Declared closed by the arbitrator on 02/07/2019

   Andrew Bruskin, Esq. from Munawar & Andrews-Santillo LLP participated in person for the Applicant

   Herman Buchanan, Sr. Claims Examiner from Liberty Mutual Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 874.44**, 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

   Whether Applicant is entitled to reimbursement for medical services provided to the Assignor herein as a result of injuries sustained in a motor vehicle accident that occurred on September 6, 2015.

4. Findings, Conclusions, and Basis Therefor

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms to the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio,* 100 NY2d 854, 768 NYS2d 423 (2003).

The Assignor, a 21-year-old male, sustained injuries to the head, neck, back, right knee, and right elbow in a motor vehicle accident on September 6, 2015. Applicant seeks reimbursement for an MRI study of the Assignor's brain performed on January 4, 2016. Respondent did not issue a denial, arguing that the claim is not ripe for arbitration as Applicant has failed to comply with requests for additional verification. In support of its contention, Respondent submitted into evidence correspondence sent to Applicant, dated February 18, 2016 and March 23, 2016, requesting a "letter of medical necessity and physician's report from Arkadiy Shusterman, M.D."

Applicant submitted into evidence a letter dated September 24, 2016 advising Respondent that it was forwarding the letter of medical necessity and a physician's report from Dr. Arkadiy Shusterman. Applicant also provided a facsimile transmission receipt showing that the correspondence was delivered to Respondent, to the attention of Andrew Pontbriand, the individual whose name appears on the letters requesting additional verification.

Under Section 5102 of the New York Insurance Law, No-Fault first party benefits are reimbursable for all medically necessary expenses due to personal injuries arising out of the use or operation of a motor vehicle. Applicant establishes a prima facie entitlement to judgment as a matter of law by proof that he submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; *Damadian MRI in Canarsie, P.C.* v. *General Assurance Company*, 2006 NY Slip Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006 Appellate Term, 2d Department); *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3rd 128, 784 N.Y.S. 2d 918 (2003).

Once Applicant establishes a prima facie case, the burden shifts to Respondent to come forward with admissible evidence demonstrating the existence of a material issue of fact. *Amaze Medical Supply Inc. v. Allstate Insurance Co*., 3 Misc.3d 133.

A No-Fault claim must be paid or denied within thirty days or it is "overdue." The insurer may lengthen the time limitations by requesting additional verification. Pursuant to 11 NYCRR 65-3.5(b), the insurer has 15 (fifteen) business days after receiving proof

of claim to request additional verification. If an insurer fails to timely deny a claim, the insurer is precluded from raising a number of defenses.

Further, section 65-3.6 (b) states: "At a minimum, if any requested verification has not been supplied to the insurer 30 calendar days after the original request, the insurer shall, within 10 calendar days, follow up with the party from whom the verification was requested, either by telephone call, properly documented in the file, or by mail. At the same time the insurer shall inform the applicant and such person's attorney of the reason(s) why the claim is delayed by identifying in writing the missing verification and the party from whom it was requested."

Applicant cannot simply ignore Respondent's request for additional verification and Respondent cannot ignore Applicant's response to a verification request. In *Westchester Co. Med. Ctr. v. New York Central Mut. Fire Ins. Co.,* 262 A.D.2d 553, 692 N.Y.S.2d 664 (2d Dept.199), the plaintiff failed to respond to the insurer's request for additional verification. The Court held that, "Any confusion on the part of the plaintiff as to what was being sought should have been addressed by further communication, not inaction." In *Canarsie Chiropractic, P.C. v. State Farm Mut. Auto Ins. Co.,* 27 Misc. 3d 1228 (A), 911 N.Y.S.2d 691 (Civ. Ct. Kings County 2010, the Court, citing *Westchester Co. Med. Ctr. v. New York Central Mut. Fire Ins. Co.,* supra, the Court held that by failing to respond to the insurer's request for additional verification, the plaintiff had waived its defense and could not argue that the additional verification requests were defective. Even when a claimant believes it need not comply with a verification request, the claimant still has the duty to communicate with the insurer regarding the request.

However, pursuant to 11 NYCRR 65-3.2(f), an insurance company is also under an obligation to act once it receives a response to its verification request. An insurer is required to *respond promptly, when a response is indicated, to all communications from insureds, applicants, attorneys and any other interested persons.* In *Media Neurology, P.C. v. Country-Wide Ins. Co.,* 21 Misc. 3d 1101 (A), 873 N.Y.S.2d 235, (Civ. Ct. Kings County 2008), the Court held "once Plaintiff submitted its response to Defendant's additional verification request, it was then incumbent upon Defendant to inform Plaintiff that said response was insufficient and/or incomplete."

After carefully reviewing the evidence presented, I find that Applicant responded to the request for additional verification. Therefore, Applicant is entitled to reimbursement.

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 applicant is AWARDED the following:

A.

Medical		**From/To**	**Claim Amount**	**Status**
	Lenox Hill Radiology & Medical Imaging Associates PC	**01/04/16 - 01/04/16**	**$874.44**	**Awarded: $874.44**
Total			**$874.44**	**Awarded: $874.44**

B. The insurer shall also compute and pay the applicant interest set forth below. 12/09/2016 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

   Interest shall begin to accrue as of December 9, 2016, the date the claim is received by the American Arbitration Association, until payment is made. The interest shall be two percent per month, simple, not compounded, on a pro rata basis using a 30 day month.

C. Attorney's Fees

   The insurer shall also pay the applicant for attorney's fees as set forth below

   With respect to the claim for which compensation was awarded, Respondent shall pay Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6 (e). Since the within

arbitration request was filed on or after April 5, 2002, if the benefits and interest awarded thereon are equal to or less than Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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

State of New York
SS :
County of New York

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

03/15/2019
(Dated)

Bernadette Connor

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:
a9b8a0ecaeb595ce36f93666fee699ab

Electronically Signed

Your name: Bernadette Connor
Signed on: 03/15/2019