

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Care 4U Physical Therapy, P.C.  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No.	17-19-1125-5672
Applicant's File No.	GTLCU031119.103
Insurer's Claim File No.	32-4300-C10
NAIC No.	25178

**ARBITRATION AWARD**

I, Hersh Jakubowitz, 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: EIP

1. Hearing(s) held on 07/08/2020  
Declared closed by the arbitrator on 07/08/2020

George T. Lewis from Law Offices of George T. Lewis, Jr., PC participated by telephone for the Applicant

Michael Haratty from McDonnell Adels & Klestzick, PLLC participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,303.55**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated that Applicant had met its prima facie burden of proof, that Respondent's denials were interposed in a timely fashion and the claim amount adheres to the fee schedule.

3. Summary of Issues in Dispute

Was the Respondent correct in denying Applicant's claim on account that Respondent did not receive a response to its verification requests?

#### 4. Findings, Conclusions, and Basis Therefor

This award is predicated upon both a review of the respective submissions of the parties contained within the electronic case file maintained by the American Arbitration Association and the oral argument of the parties.

The dispute arises from an automobile accident on May 29, 2018, in which the EIP, a then 47-year-old male was the restrained driver involved in a motor vehicle accident and suffered injuries to his neck, back, shoulders, knees and left wrist and hand. The EIP went to Queens General hospital where he was treated, medicated and released.

On June 5, 2018, the EIP went to see the Applicant for evaluation and care. The EIP complained of headaches, cervical pain, bilateral shoulder pain, left wrist and finger pain, lumbar pain that radiates into left leg and bilateral knee pain. Examination revealed tenderness, trigger points, limited range of motion, positive straight leg raise/Braggard's, Hawkin's/Neer's and MacMurray's tests and muscle weakness. That EIP commenced with physical therapy, acupuncture treatments and medication to relieve EIP's symptoms. Applicant administered physical therapy treatments from May 30, 2018 through October 1, 2018, manual muscle testing and range of motion testing on June 11, 2018, July 16, 2018 and August 27, 2018 and EIP's initial office visit and the reimbursement for said services is the issue in this matter.

The Applicant has established its prima facie case by proof that the prescribed statutory billing forms had been received and that payment of no-fault benefits was not forthcoming. (See, [New York & Presbyt. Hosp. v. Countrywide Ins. Co., 44 A.D.3d 729 \[N.Y. App. Div. 2d Dep't 2007\]](#)). Proof of the receipt of the Applicant's billing is implicit in the verification request and timely denials issued by the Respondent.

Applicant appeared for an EUO on June 18, 2018 and the EUO was concluded that day. The Respondent subsequently requested additional verification. The Respondent's denial states, " Pursuant to 11 NYCRR 65-3.5(o), Care 4 U Physical Therapy PC has failed to submit verification documentation requested on August 6, 2018 and September 11, 2018 for the referenced claims within the prescribed 120 day period, therefore, benefits are denied".

A verification demand by a Respondent will extend the 30-day period until such time as the requested verification is received (See 11 NYCRR § 65.15(g)(1)(i); [Hosp. For Joint Diseases v Elrac, Inc., 11 AD3d 432 \[2d Dept 2004\]](#); [Westchester County. Med. Ctr. v New York Cent. Mut. Fire Ins., 262 AD2d 553 \[2d Dept 1999\]](#).) Where a requested verification is not provided a Respondent, the claim remains tolled indefinitely; to wit, the Respondent need not pay or deny the claim if it never receives the requested verification. (See, 11 NYCRR § 65-3.8; [NY & Presbyt. Hosp. v Progressive Cas. Ins. Co., 5 AD3d 568 \[2d Dept 2004\]](#).)

However, with respect to claims for medical services rendered on or after April 1, 2013, a Respondent may issue a denial if, more than 120 calendar days after the initial request for verification, the Applicant has not submitted all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. This new provision, recently added as part of the Fourth Amendment to Regulation 68-C, is not applicable, however, where the requested verification is a prescribed form (NF Form), a medical examination request, or examination under oath request. (See 11 NYCRR 65-3.5[o]; 11 NYCRR 65-3.8[b].)

In support of its position, Respondent has submitted many delay/verification requests . These verification requests acknowledge receipt of the claims, that the requests are post EUO and indicate payment will be denied if information is not received.

The verifications request the following:

- Care 4 U Physical Therapy PC's federal and state tax returns including all attachments, schedules and any amendments for 2017, including New York State Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Returns (NYS-45-MN), including all attachments (NYS-45-ATT-MN) or amendments (NYS-45-X-MN).
- Bank records for all accounts held by Care 4 U Physical Therapy, PC including and cancelled checks, or the electronic equivalent, demonstrating all deposits and debts/withdrawals for said account from 2017 to present.
- Ledger/spreadsheet detailing Care 4 U, Pc's income and expenses as testified to at the June 18, 2018 EUO.
- Documents establishing annual corporate benefits and distributions taken by Young Seok Park as testified to at the June 18, 2018 EUO including K-1s issued by Care 4 U Physical Therapy, PC to Young Seok Park for 2017.
- Unredacted 1099 W-2 Forms for Care 4 U Physical Therapy, PC's employees for 2017 including, but not limited to Young Seok Park, PT; Ha Na Kim PT, Giovanni Tidoy, PT; Desiree (Lopez/Javelosa); Corina Bueno, PTA; Gillemo Hoya and any temporary physical therapists provided by Amerifyx.
- Copies of the agreement between Care 4 U Physical Therapy, PC and Amerifyx for temporary physical therapists for January 2018 as testified to at the June 18, 2018 EUO including cashed checks or other proof of payments made pursuant to said agreement.
- Any agreements concerning the use of space at 2016 Grand Avenue, Baldwin NY 11510
- Any agreements between Care 4 U Physical Therapy, PC and any other providers operating at 2016 Grand Avenue, Baldwin NY 11510, including, but not limited

Baldwin Chiropractic, PC (Woo Yup Kang, DC); Lam Quan, MD, PC (Lam Quan MD) and New York Pain Management Group (Cean Conrad, MD) in effect for 2017 and 2018.

- Cashed checks or other proof of payments made to or received from any person or entity related to the use of space at 2016 Grand Avenue, Baldwin NY 11510.
- Cashed checks or other proof of payments made to or received from any other providers operating at the 2016 Grand Avenue, Baldwin NY 11510, including but not limited to Baldwin Chiropractic, PC (Woo Yup Kang, DC); Lam Quan, MD, PC (Lam Quan MD) and New York Pain Management Group (Cean Conrad, MD) in effect for 2017 and 2018.
- To the extent that such exists, copies of an agreements regarding transportation/courier services for Care 4 U Physical Therapy, PC's patients in effect for 2017 and 2018.
- Documents sufficient to identify "Albert" who was described during the June 18, 2018 EUO.
- Any agreements between Care 4 U Physical Therapy PC and "Albert" who was described during the June 18, 2018 EUO.
- Any agreements between Care 4 U Physical Therapy PC and "Albert" who was described during the June 18, 2018 EUO.
- Documents reflecting payments made to or received from "Albert" who was described during the June 18, 2018 EUO.
- Cashed checks or other proof of payments made for the transportation/courier services for Care 4 U Physical Therapy, PC's patients pursuant to such agreements, including those made to "Oscar" as testified to during the June 18, 2018 EUO for 2017 to present.
- To the extent that such exists, copies of any agreements entered into by Care 4 U Physical Therapy, PC for computer support and/or website creation and maintenance in effect for 2017 and 2018.
- Cashed checks or other proof of payments made by Care 4 U Physical Therapy, PC for computer support and/or website creation and maintenance pursuant to such agreements, including those made to "Mr. Cho" as testified to at the June 18, 2018 EUO for 2017 to present.
- To the extent that such exists, copies of any agreements entered into by Care 4 U Physical Therapy, PC relating to the provision of computerized range of motion and muscle testing as testified to at the June 18, 2018 EUO in effect for 2017 and 2018, including but not limited to relating to the rental of equipment.
- Cashed checks or other proof of payments made by Care 4 U Physical Therapy, PC relating to computerized range of motion testing, including but not limited to relating to

the rental of equipment used to provide computerized range of motion and muscle testing pursuant to such agreements, including those made to "Gillemo Hoya" as testified to at the June 18, 2018 EUO for 2017 to present.

The Applicant responded on December 5, 2018, January 5, 2019 and January 15, 2019:

1. Copy of temporary employee W-2 attached, no other;
2. Leases and subleases previously supplied, and no other leases or agreements exist;
3. No payments were made to "Albert";
4. No agreements for computer services and or repairs etc. with Mr. "Cho" but already provided copies of checks to K1 Sysnet, Inc.;
5. Applicant objects to demand for payroll records, Corporate Federal and State tax returns, bank statements, financial statements, general ledgers and other financial documents and said requests are objected to as improper and outside the scope of the no-fault rules and regulation and are made to frustrate the claims process..

It is evident that Applicant has supplied all requested documents as of December 5, 2018, with exception of payroll records, Corporate Federal and State tax returns, bank statements, financial statements, general ledgers and other financial documents.

### **Respondent's Argument**

#### **Investigator Affidavit**

The Respondent supplies an affidavit from Alicia Teneyck, from special investigative unit that the Applicant committed the following to raise questions about the Applicant's operations:

1. All EIPs had same subjective complaints;
2. All EIPs had same treatments and modalities at 2016GrandAvenue;
3. Treatment regimen does not change regardless of the results of the EMG/NCV studies and MRIs;
4. Young Seok Park, purport owner of Applicant, also owns numerous other medical professional corporations.

At the EUO of Young Seok Park, purport owner of Applicant, following responses was questionable:

1. Young Seok Park was not sure whether 2017 tax return had been filed;

2. Young Seok Park could not state or even estimate the 2017 income of Applicant and disbursements he received from Applicant;
3. Applicant leases space to medical providers that most of Applicant's EIP's are referred to:
4. Young Seok Park testified that Applicant does not provide advertising for tenants, yet Applicant's website indicates that Applicant provides pain management and chiropractic services:
5. Young Seok Park did not know the difference between active and passive physical therapy modalities:
6. Young Seok Park signed a very small percentage of bills subject to EUO.

The Applicant argues that the Applicant has no management company and that no one but Young Seok Park owns the Applicant and that the Respondent is on a fishing expedition, that Young Seok Park testified for hours giving honest testimony and there is no tangible proof that the Applicant is a fraudulent incorporated enterprise and not properly owned.

11 NYCRR 65-3.16 (a)(12) states that a medical provider must meet all licensing requirements in order to be eligible for No-Fault reimbursement and that insurers may withhold No-Fault payments for medical services provided by fraudulently incorporated enterprises

A medical provider found to have been fraudulently incorporated is not eligible to collect No-Fault benefits and this defense is not subject to preclusion due to late denial. *State Farm Insurance Co. v. Malella*, 794 N.Y.S. 2d 700 (2005). The Mallella court noted that an insurer delaying payment in order to pursue an investigation must be based solely on good cause. In this instance, the request for an examination under oath, pursuant to the evidence proffered, is well founded. But the question remains is the post EUO verification requests, requesting payroll records, Corporate Federal and State tax returns, bank statements, financial statements, general ledgers and other financial documents, a valid discovery process in the potential fraudulent incorporation of Applicant or is it a fishing expedition and in the process stymieing the goals of the No-Fault regulations.

The court determined in *Bay Plaza Chiropractic v. State Farm Mutual Automobile Insurance Co.*, 21 Misc. 3d 1102 (Civ. Ct. Richmond County 2008) that the insurer must show "good cause" by demonstrating behavior that is tantamount to fraud when requesting verification in accordance with Malella. In *Pomona Medical Diagnostics PC v. Adirondack Insurance Co.*, 2012 NY Slip Op 51165 (App. Term 1 Dept.), the court held that insurers cannot engage in mere fishing expeditions for Malella evidence.

The courts have stated that a Respondent insurer cannot ask for corporate and financial records. *Dynamic Med. Imaging v State Farm Mutual Automobile Ins. Co.*, 2012 N.Y. Slip Op 50676 (U), 35 Misc 3d 1213 (A) (Nassau Co. Dist. Ct 2012), "The regulations

do not provide an insurer with the right to obtain written documentation other than such documentation{\*\*29 Misc 3d at 283} as may be demanded as verification. In addition to appearing for an examination under oath, the assignee can be compelled to execute a written proof of claim under oath and provide other pertinent information as may assist the insurer in determining the amount due and payable. (11 NYCRR 65-1.1.) The regulations do not give the insurer the right to ask an assignee to produce documents relating to the corporate structure or finances of a medical provider. (11 NYCRR 65-3.5 [a].) Upon receipt of the completed verification form, the insurer can request additional verification. (11 NYCRR 65-3.5 [b].) The regulations only permit the insurer to obtain written information to verify the claim. (11 NYCRR 65-3.5 [c]; see generally *V.M.V. Mgt. Co., Inc. v Peerless Ins.*, 15 AD3d 647 [2d Dept 2005].) Nothing in the no-fault regulations permits an insurer to request an assignee to produce corporate organizational and financial documents".

Yet, the court in *Andrew Carothers, M.D., P.C. v Progressive Ins. Co.* 2019 NY Slip Op 04643 Decided on June 11, 2019 Court of Appeals stated "corporate practice that shows "willful and material failure to abide by" licensing and incorporation statutes (Mallela, 4 NY3d at 321) may support a finding that the provider is not an eligible recipient of reimbursement under 11 NYCRR 65-3.16 (a) (12) without meeting the traditional elements of common-law fraud. Nor is a jury required to evaluate the extent to which corporate misconduct approximates fraud. The no-fault insurance regulations make providers ineligible for reimbursement when their violations of the cited statutes are more than merely technical and "rise to the level of" a grave violation such as fraud (id. at 322). Insurance carriers do not have good cause to delay or deny payments of reimbursement claims on the basis of a provider's slight divergence from licensing requirements. Here, the jury's finding that plaintiff was in material breach of the foundational rule for professional corporation licensure - namely that it be controlled by licensed professionals - was enough to render plaintiff ineligible for reimbursement under 11 NYCRR 65-3.16 (a) (2). The trial court committed no error in refusing to issue a charge requiring a "tantamount to fraud" finding by the jury".

The Respondent has not shown how post EUO verification requesting payroll records, Corporate Federal and State tax returns, bank statements, financial statements, general ledgers and other financial documents would assist in clarifying any issues of fraudulent incorporation. There has been no proof or allegation of a fraudulent incorporation just some sort of guilt by the fact that Applicant owns other medical facilities, is landlord to other medical modalities, doesn't know if he filed 2017 tax returns, doesn't know his income and is utilizing a predetermined treatment plan for every patient it treats, this allegation that the Applicant is fraudulently incorporated cannot be ascertained from the Respondent's verification requests..

Based on the entire record, I find that the verification requests were in fact a fishing expedition, improper, unreasonable and possibly abusive as a matter of fact. See, *Am. Transit Ins. Co. v. Jaga Med. Servcs, PC*, 2015 NY Slip Op. 03925(1<sup>st</sup> Dept. May 7, 2015)*Mt. Sinai Hosp. V. Auto One Ins. Co.*, 121 A.D. 3d 869, 994 N.Y.S. 2d 667(2d Dept. 2014);*Omega Diagnostic Imaging, PC v. MVAIC*, 29 Misc. 3d 129(A)(App. Term 1<sup>st</sup> Dept. 2010).

For this reason, I find in favor of the Applicant.

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
	Care 4U Physical Therapy, P.C.	05/30/18 - 07/06/18	\$1,360.99	Awarded: \$1,360.99
	Care 4U Physical Therapy, P.C.	06/11/18 - 06/11/18	\$130.80	Awarded: \$130.80
	Care 4U Physical Therapy, P.C.	06/11/18 - 06/11/18	\$182.84	Awarded: \$182.84
	Care 4U	07/09/18 -		Awarded:



	<b>Physical Therapy, P.C.</b>	<b>07/31/18</b>	<b>\$862.40</b>	<b>\$862.40</b>
	<b>Care 4U Physical Therapy, P.C.</b>	<b>07/16/18 - 07/16/18</b>	<b>\$218.00</b>	<b>Awarded: \$218.00</b>
	<b>Care 4U Physical Therapy, P.C.</b>	<b>07/16/18 - 07/16/18</b>	<b>\$182.84</b>	<b>Awarded: \$182.84</b>
	<b>Care 4U Physical Therapy, P.C.</b>	<b>08/27/18 - 08/27/18</b>	<b>\$174.40</b>	<b>Awarded: \$174.40</b>
	<b>Care 4U Physical Therapy, P.C.</b>	<b>08/27/18 - 08/27/18</b>	<b>\$228.55</b>	<b>Awarded: \$228.55</b>
	<b>Care 4U Physical Therapy, P.C.</b>	<b>09/04/18 - 10/01/18</b>	<b>\$962.73</b>	<b>Awarded: \$962.73</b>
<b>Total</b>			<b>\$4,303.55</b>	<b>Awarded: \$4,303.55</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/09/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based that the arbitration request was filed within 30 days of receipt of the denial or denial was never issued or late, on account of receiving verification response on December 5, 2018 there is no stay of interest, pursuant to 11 NYCRR 65-3.9(c) and pursuant to Insurance Law 5106(a), interest shall run from when benefits were overdue, i.e., 30 days after the Respondent's receipt of the bill or verification response until payment, at a rate of 2% per month.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the

applicant an attorney fee, in accordance with newly promulgated 11 NYCRR 65-4(d). After calculating the sum total of the first party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of the sum total, subject to no minimum and a maximum of \$1,360.00.

- 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 Nassau

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

07/11/2020

(Dated)

Hersh Jakubowitz

### **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:**  
cac28c00d773b08b063c1c95eba1d21f

### **Electronically Signed**

Your name: Hersh Jakubowitz  
Signed on: 07/11/2020