

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

(Applicant)	AAA Case No.	17-20-1169-8558
- and -	Applicant's File No.	N/A
Allstate Insurance Company	Insurer's Claim File No.	0483044483
(Respondent)	NAIC No.	19232

ARBITRATION AWARD

I, Andrew Horn, 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: Applicant, eligible injured person, injured person.

1. Hearing(s) held on 10/26/2020
Declared closed by the arbitrator on 10/26/2020

Stephen D. Donohue, Esq., from Stephen D. Donohue, P.C., participated by telephone for the Applicant

Meghan McDonough, Esq., from Law Offices of John Trop, participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 15,113.12**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that in the event of an award in Applicant's favor she would be entitled to receive a maximum of \$2,000 per month for the three-month period from November 23, 2017 through February 19, 2018, for a total of \$6,000.

3. Summary of Issues in Dispute

In dispute is Applicant's claim for reimbursement for wages lost from November 23, 2017 through February 19, 2018, as a result of injuries sustained by the 60-year-old woman in a motor vehicle accident on November 22, 2017 in Rockland County, New York, the same county where she resided.

At the time of the accident, Applicant was employed by United Airlines as a customer service representative at Newark Airport in Newark, New Jersey, and earned a monthly salary of \$5,240.

Respondent Allstate Insurance Company denied the claim based upon the "failure to submit ... requested documentation in a timely manner," as well as based upon an independent medical examination (IME) on May 7, 2018 by its orthopedic surgeon Dr. Joseph Y. Margulies.

4. Findings, Conclusions, and Basis Therefor

Pursuant to Insurance Law § 5106 (a) and 11 NYCRR § 65-3.5, an insurer or self-insurer is required to either pay or deny, in whole or in part, a claim for No-Fault benefits within thirty (30) calendar days after proof of claim is received. *Id.*

The 30-day statutory period may be extended by a request by the insurance company or self-insurer for additional verification of the claim. 11 NYCRR § 65-3.8 (1).

An insurer's request for additional verification is not limited to the party seeking benefits, but may be addressed to "a party other than the applicant." Doshi Diagnostic Imaging Services v. State Farm Ins. Co., 16 Misc.3d 42 (App. Term 2d Dept. 2007).

"(I)f any requested verification() has not been supplied to the insurer 30 calendar days after the original request, the insurer shall, with 10 calendar days, follow up with the party from whom the verification was requested," and, "(a)t the same time ... 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." 11 NYCRR 65-3.6(b).

After receiving Applicant's No-Fault application (Form NF-2) on December 7, 2013, Respondent wrote to the injured person's attorney and requested her employer's full name and address. On December 8, 2017, her attorney responded via facsimile.

While the insurance carrier sent the wage verification form to Applicant's employer on December 20, 2017 and February 1, 2018, Respondent did not *simultaneously* advise Applicant and her attorney, as required by 11 NYCRR § 65-3.6(b), that the lost wage claim was being further delayed "pending receipt of the completed and signed ... Employer's Wage Verification Form," which "ha(d) been mailed to (her) employer," but instead waited nearly six months, until June 20, 2018, to inform her.

The requirement "to issue a delay letter to ... (applicant) ... applies ... where information is sought from a party other than the applicant." GNK Med. Supply, Inc. v. Tri-State Consumer Ins. Co., 37 Misc.3d 138(A) (App Term 1st Dept. 2012). See Doshi Diagnostic Imaging Services v. State Farm Ins. Co., 16 Misc.3d 42 (App. Term 2d Dept. 2007).

Moreover, although the promulgation of the Fourth Amendment to the revised Regulation 68 authorizes an insurer to issue a denial with respect to a claim for lost wages resulting from an accident on or after April 1, 2013, upon an applicant's failure, "more than 120 calendar days after (an) initial request for verification," to provide "all such verification under the applicant's control or possession," see 11 NYCRR § 65-3.5 (o); TAM Med. Supply Corp. v. Tri State Consumers Ins. Co., 57 Misc.3d 133(A) (App Term 2d, 11th & 13th Dists. 2017), the new provision is not applicable where the requested verification is a prescribed form (NF Form), see 11 NYCRR § 65-3.5 (o).

In fact, the Insurance Regulations explicitly provide that the "failure of an employer, or other third party, to provide information necessary to establish proof of claim for lost wages on behalf of an applicant shall not be utilized as a basis for denial of claim...." 11 NYCRR 65-3.5 (m).

To the extent that the insurance carrier also contends that it was entitled to deny the claim based upon its unsatisfied request on July 19, 2018 for an updated disability note from the treating physician, Respondent did not follow up this request.

Since an insurer is "under a regulatory duty to issue a second request for verification within 10 days after the expiration of that 30-day period," see 11 NYCRR 65-3.6(b); Sound Shore Med. Ctr. v. New York Cen. Mut. Fire Ins. Co., 106 A.D.3d 157, 163-165 (2d Dept. 2013), in the absence of any such second request for verification, the 30-day period within which the insurer had to pay, deny, or request verification of the bills is not extended, see Westchester Med. Ctr. v. Allstate Ins. Co., 112 A.D.3d 916 (2d Dept. 2013); Shore Med. Ctr. v. New York Cen. Mut. Fire Ins. Co., 106 A.D.3d 157, 163-165 (2d Dept. 2013), and its request for additional verification is deemed abandoned, see King's Med. Supply v. Allstate Ins. Co., 7 Misc.3d 128(A) (App Term 2d & 11th Dists. 2005); Amaze Med. Supply v. Allstate Ins. Co., 3 Misc.3d 43, 44 (App Term 2d & 11th Dists. 2004).

As the insurance carrier "abandoned" its request for an updated disability letter and was not permitted to set a deadline for the return of the requested NF-6 form or to deny the claim based upon Applicant's employer's failure to comply "in a timely manner," Respondent's denial predicated upon the 120-day rule must be vacated.

In any event, it is uncontroverted that the requested wage verification form was mailed to the insurer by Applicant's attorney on July 11, 2018, less than 30 days after Respondent's June 20, 2018 delay letter.

Although the insurance carrier also cut off benefits based upon Dr. Margulies' re-examination of the injured person on May 7, 2018, nearly three months after Applicant had already returned to work, the IME report in which Respondent's orthopedist determined that assignor's injuries had resolved and that she had "no functional disability" at that time and could continue with her employment is insufficient, as a matter of law, to demonstrate that the EIP had not been disabled and unable to work months *prior* to the time the IME was conducted. See Avicenna Med.

Arts, P.L.L.C. v. GEICO Ins. Co., 41 Misc.3d 140(A) (App Term 2d, 11th & 13th Dists. 2013); Ying E. Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A) (App Term 2d & 11th Dists. 2008).

Notwithstanding that the injured person established that she lost wages in excess of \$5,000 per month, the insurance policy provides for a maximum monthly allowance of \$2,000 for work loss. (As Respondent's attorney acknowledged, there was no evidence that the insurer was entitled to offset the claim based upon the injured person's receipt, or entitlement to receipt, of Workers' Compensation or disability benefits).

Hence, as both parties stipulated, Applicant is entitled to be reimbursed a total of \$6,000 for the period in question.

This award is in full disposition of all No-Fault benefit claims submitted to this Arbitrator.

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.

Loss Of Earnings	From/To	Claim Amount	Status
	11/23/17 - 02/19/18	\$15,113.12	Awarded: \$6,000.00
Total		\$15,113.12	Awarded: \$6,000.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/25/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Inasmuch as Applicant did not file for arbitration within 30 days of receipt of Respondent's denial, the statutory tolling provision applies. Accordingly, the insurer shall pay interest on the claim totaling \$6,000 from June 25, 2020, the date Applicant initiated arbitration, until such time as payment is made.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee, subject to a maximum fee of \$1,360.00, in accordance with 11 NYCRR 65-4.6(d).

- 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 Bronx

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

01/10/2021
(Dated)

Andrew Horn

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:

4e37581ce1420c9fe9eff53ef5ffdb0c

Electronically Signed

Your name: Andrew Horn
Signed on: 01/10/2021