

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nexray Medical Imaging PC d/b/a Soul
Radiology
(Applicant)

- and -

Farmers Insurance Company
(Respondent)

AAA Case No.	17-18-1113-4288
Applicant's File No.	RFA18-225140
Insurer's Claim File No.	3010738493
NAIC No.	21687

ARBITRATION AWARD

I, Henry Sawits, 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: the patient.

1. Hearing(s) held on 01/12/2021
Declared closed by the arbitrator on 02/02/2021

Andrew Ciccaroni, Esq. from Russell Friedman & Associates LLP participated by telephone for the Applicant

Joelle Roberts, Esq. from Law Offices Of Buratti, Rothenberg, & Burns participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,571.78**, 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

This arbitration arises out of treatment of a fifty-four-year old male for injuries sustained in a motor vehicle accident occurring on April 30, 2018.

Applicant seeks reimbursement, in the amount of \$1,571.78, for MRIs of the patient's lumbar spine and cervical spine, performed on June 4, 2018.

Respondent issued timely denials denying reimbursement based on the assertion that requested verification was not provided to the Respondent by the Applicant within 120 days of the date of the initial request as required by the No-Fault Regulations.

The issue in this arbitration is whether the Respondent properly denied Applicant's claim for reimbursement based on the assertion that requested verification was not provided to the Respondent by the Applicant within 120 days of the date of the initial request.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing and this Award is based upon my review of the Record, the arguments made by the representatives of the parties at the Hearing and the post-hearing submission of the Respondent.

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The patient was injured in an automobile accident on April 30, 2018 and thereafter came under the care and treatment of Dr. Atlatf Shaik who ordered MRIs of the patient's lumbar and cervical spine. The MRIs were performed by Applicant on June 4, 2018.

It is Applicant's *prima facie* obligation to establish its entitlement to payment for each service for which reimbursement is sought.

It is well settled that a health care provider establishes its *prima facie* entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see *Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

11 N.Y.C.R.R. § 65-4.5 (o) (1) provides, in part, as follows:

"(o) *Evidence.* (1) The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and *independently raise any issue that the arbitrator deems relevant to making an award* that is consistent with the Insurance Law and department regulations". (Emphasis Added).

11 N.Y.C.R.R. §65-3.5 provides, in part, as follows:

"§ 65-3.5 Claim procedure.

(b) Subsequent to the receipt of one or more of the completed verification forms, any additional verification required by the insurer to establish proof of claim shall be requested within 15 business days of receipt of the prescribed verification forms. Any requests by an insurer for additional verification need not be made on any prescribed or particular form.

(c) The insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested.

11 N.Y.C.R.R. §65-3.6 (b) provides as follows:

"§65-3.6 Follow-up requirements.

(b) *Verification requests.* At a minimum, if any requested verifications 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 my 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".

11 N.Y.C.R.R. §65-3.5 (o), effective for medical services rendered on or after April 1, 2013, provides, in pertinent part as follows:

"An applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. The insurer shall advise the applicant in the verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply".

The Record reveals that the claims for reimbursement for the MRIs of the patient's lumbar and cervical spine were received by the Respondent on June 18, 2018. On June 21, 2018 the Respondent sent the Applicant a First Request for Additional Verification requesting the following information:

- (1) Lease agreement signed by Dr. Marvin Moy for the rental of the space in 135-25 79th Street, Howard Beach, NY ("the master lease");
- (2) Sublease agreement for Nexray Medical Imaging, P.C. in 135-75 79th Street, Howard Beach, NY;
- (3) Bank records;

- (4) Quarterly tax returns - IRS Form 941;
- (5) Contracts with the computer system that set up Nexray Medical Imaging P.C.'s computer software;
- (6) Contract information for Nexray Medical Imaging P.C.'s accountant; and
- (7) Contract with the accountant for Nexray Medical Imaging, P.C.

When the Applicant did not respond to this First Request for Additional Verification, the Respondent sent a Second Request for Additional Verification on July 24, 2018 seeking the same information. Applicant did not respond to this Second Request for Additional Verification.

Applicant did not make any objection to these Requests for Additional Verification. Indeed the Applicant asserts that it did not receive these requests and demanded that Respondent submit proof of mailing of the Requests for Additional Verification.

The Respondent was permitted to make a post-hearing submission, on or before Friday, January 22, 2021, of proof of mailing of each of the Requests for Additional Verification. Applicant was permitted to make a post-hearing submission, on or before Friday, January 29, 2021, responding to Respondent's post-hearing submission.

The Respondent has made its post-hearing submission consisting of the Affidavit of Richard Tirino, a Claims Representative employed by Respondent. In this Affidavit Mr. Tirino describes in detail Respondent's standard operating procedures relating to the receipt and mailing of all no-fault regulation required documents, including NF-10's and verification letters. Mr. Tirino attached, and attested to, proof of mailing for the verification requests issued on June 21, 2018 (mailed on June 22, 2018) and July 24, 2018 (mailed on July 25, 2018). These Requests for Additional Verification were addressed to the Applicant at the same address listed on Applicant's NF-3's.

Although Applicant was given the opportunity to make a post-hearing submission in response to the post-hearing submission of the Respondent, the Applicant has not made a post-hearing submission responding to Respondent's post-hearing submission and has not requested additional time to do so.

In view of all of the foregoing and upon consideration of the arguments of counsel and after a thorough review of all submissions I find that Respondent has submitted sufficient evidence to meet its burden of demonstrating that it properly denied Applicant's claim for reimbursement based on the assertion that the Applicant failed to provide requested verification to the Respondent within 120 days of the date of the initial request. Applicant's claim for reimbursement is, therefore, denied.

- 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 claim is DENIED in its entirety

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

State of New York
SS :
County of Suffolk

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

02/02/2021
(Dated)

Henry Sawits

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:
8249543294a47c6c2488c3b522ffa1f8

Electronically Signed

Your name: Henry Sawits
Signed on: 02/02/2021