

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

SNPT PC
(Applicant)

- and -

New South Insurance Company
(Respondent)

AAA Case No. 17-20-1159-6845

Applicant's File No. N/A

Insurer's Claim File No. 2372354-001

NAIC No. 12130

ARBITRATION AWARD

I, Amanda R. Kronin, 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: DL

1. Hearing(s) held on 03/02/2021
Declared closed by the arbitrator on 03/02/2021

Walter Pisary, Esq from The Law Offices of Hillary Blumenthal P.C. (Melville)
participated by telephone for the Applicant

Brian Korman, Esq from Law Offices of Bobbi J. Vilacha participated by telephone for
the Respondent

2. The amount claimed in the Arbitration Request, \$ 3,792.34, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing in this matter, Applicant amended the amount in dispute to \$3576.86 in accordance with its calculations pursuant to the fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The Assignor, CA, 33 year old male, was injured as the driver of an automobile involved in an accident on 02/23/16. In dispute is the Applicant's claim for treatment provided from 02/29/16 through 01/09/17.

Respondent properly issued requests for further verification pertaining to the claim within 30 days of receipt of the bills for dates of service 02/29/16 through 07/22/16. Dates of service 7/26/16 through 01/09/17 were denied predicated upon the Assignor's failure to attend two properly scheduled independent medical examinations (IMEs). On 10/06/16, Responded issued a global denial on the ground that the Assignor failed to attend two independent medical examinations (IMEs).

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

In the instant case, Respondent properly issued requests for further verification pertaining to the claim within 30 days of receipt of the bills for dates of service 02/29/16 through 07/22/16. Respondent issued timely requests for verification, within 30 days of its receipt of the bills. At the hearing in this matter, the parties agreed that there was no issue regarding the timeliness of the requests. Respondent sought additional verification of the Applicant requesting: Employer's complete name, address and telephone number; Copies of time cards for the last three (3) months prior to the date of loss; Copies of pay stubs for the last three (3) months prior to the date of loss and Copy of W2 or 1099 forms for the last year.

The letters also cited to Regulation 65-3.5 (o) which took effect as of April 1, 2013 and states as follows. Pursuant to 11 NYCRR 65-3.5(o), "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 evidence demonstrates that the Respondent sought additional verification, requesting the same items delineated above. Within/or in excess of the 120 days from the date of the initial request for verification, the Respondent alleges that Assignor failed to attend two properly scheduled IMEs resulting in Respondent's global denial of the claim, on that basis on 10/06/16.

A no-fault claim must be paid or denied within thirty (30) days after proof of claim is received or it is "overdue". See N.Y. Ins. Law § 5106[a]; 11 NYCRR 65-3.8(a)(1); Presbyterian Hospital v. Maryland Cas. Co., 90 N.Y.2d 274 (1997). The 30-day period in which to either pay or deny a claim is extended where the insurer makes a timely request for additional verification. See Montefiore Med. Ctr. v. Government Empls. Ins. Co., 34 AD3d 771; New York & Presbyt. Hosp. v. Allstate Ins. Co., 31 AD3d 512; Kingsbrook Jewish Medical Center v. Allstate Insurance Co., 61 A.D.3d 13, 17-18, 871 N.Y.S.2d 680, 683 (2d Dept. 2009). "Thus, a timely additional verification request tolls the insurer's time within which to pay or deny a claim (see Fair Price Med. Supply Corp. v Travelers Indem. Co., 10 NY3d at 563; New York & Presbyt. Hosp. v. Countrywide Ins. Co., 44 AD3d 729, 730)." Kingsbrook Jewish Medical Center v. Allstate Insurance Co., supra at 18, 871 N.Y.S.2d at 683 (2d Dept. 2009). 11 NYCRR 65-3.5 (c) states

"The insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." An insurer is not obligated to pay or deny a claim until it has received verification of all relevant information requested. See Nyack Hospital v. State Farm Mutual Automobile Ins. Co., 19 A.D.3d 569 (2d Dept. 2005).

In Westchester Medical Center v. Lincoln General Insurance Company, 2009 NY Slip Op 2598, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2'd Dep't 2009) the Court held that where an insurers denial of liability was based upon a claimant's failure to appear at an examination under oath, such an alleged breach does not serve to vitiate the medical provider's right to recover no fault benefits **or to toll** the 30-day statutory period. (emphasis added) (See Mount Sinai Hosp. v Triboro Coach, 263 AD2d 11, 17, 699 NYS2d 77 [1999]). Rather, such denial was subject to the preclusion remedy. (See Central Gen. Hosp. v Chubb Group of Ins. Cos., 90 NY2d at 199; Zappone v Home Ins. Co., 55 NY2d 131, 136-137, 432 NE2d 783, 447 NYS2d 911 [1982]; cf. +Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co., 90 NY2d 274, 279-280, 683 NE2d 1, 660 NYS2d 536 [1997]). Even though I follow Westchester, I do not find it applicable herein. In the present matter, Respondent properly tolled the time to pay or deny the claim because it issued timely verification requests.

While Respondent's verification requests concerning the bills from 02/29/16 through 7/20/16 was still outstanding, i.e., Applicant had not yet provided a complete response to the verification request, Respondent issued its denial of the bill based on the Assignor's failure to appear for the IMEs. Therefore,

Respondent also asserted the IME no-show defense in a timely denial of the bills for which further verification was sought.

In order to support a defense based upon an assignor's alleged failure to appear for an IME, the burden is on respondent to demonstrate prima facie: 1) The IME requests were actually mailed; and 2) the assignor failed to appear for the scheduled IMEs. See, generally Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.2d 720 (2 Dept. 2006).

There is no question that the no-fault regulations require an assignor to submit to an Independent Medical Examination. Attendance at an IME is a condition of coverage under the insurance regulations. 11 NYCRR § 65-1.1 ("no action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage"). Consequently, it follows that the failure of an injured person to comply with a request for an IME is a defense for an insurer to a claim for no-fault benefits, so long as the request strictly complies with the governing regulations, even as to a claim by a provider as the eligible injured party's assignee. Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 2011 NY Slip Op 01948 (App Div 1st Dept. March 17, 2011); Stephen Fogel Psychol. P.C. v. Progressive Ins. Co., 2006 NY Slip Op 09604 (App Div 2d Dept. Dec. 19, 2006). See Great Wall Acupuncture, P.C. v. New York Cent. Mut. Fire Ins. Co., 2009 NY Slip Op 50294(U), 22 Misc.3d 136(A) (App. Term 2d Dept., Feb. 20, 2009) (insurer justified in denying claim based upon failure of provider's assignor to appear). An eligible injured person must attend an IME scheduled by the No-Fault insurer and the failure to do so may form the basis for denying compensation for health services rendered by assignee-health providers. Vega Chiropractic, P.C. v. Clarendon National Ins. Co., 25 Misc.3d 144(A), 906 N.Y.S.2d 776 (Table), 2009 N.Y. Slip Op. 52536(U), 2009 WL 4840230 (App. Term 2d, 11th & 13th Dists. Aug. 31, 2009). In order to support a defense based upon an assignor's alleged failure to appear for an IME in the Second Department, the burden is on the insurer to demonstrate that such defense has been preserved in a timely denial of claim form. See, generally Westchester Med. Center v. Lincoln Gen. Ins. Co., 60 A.D.2d 11 (2nd Dept. 2009).

An insurer makes its prima facie showing by demonstrating that two separate requests for the IMEs were duly mailed to the assignor and that the assignor failed to appear for the examination on the dates scheduled

pursuant to the requests. Apollo Chiropractic Care, P.C. v. Praetorian Ins. Co., 27 Misc.3d 139(A), 2010 NY Slip Op 50911(U) (App Term 1st Dept.). Herein, the Respondent has demonstrated that it mailed two separate requests to the Assignor to attend IMEs with Anna Krol, MD on 7/18/16 and on 8/29/16. In support of this contention, the Respondent relies upon the Affidavit of Karen Wrazen, one of its claims managers who attests that she properly mailed the requests to the Assignor. The Respondent also provided an Affidavit from Georgiana Michonos who attested that she was directly contacted by Dr. Krol's office on the dates in issue and was informed of the Assignor's failure to appear. Thus, the record established that the Assignor failed to attend the appointments. On 10/06/16 the Respondent issued a global denial predicated on the Assignor's failure to attend the IME appointments. Respondent has established its IME no-show defense. In the instant case, Respondent has established both prongs as set forth in Fogel. Applicant's Assignor has committed a policy violation by failing to appear.

I find Respondent's proof sufficient to sustain its burden that the IME letters were properly mailed and that the Assignor failed to attend on any occasion. Applicant failed to produce any evidence that the Assignor appeared at the IMEs or responded in any way. Accordingly, based upon the facts of this matter, I find that there has been a violation of the policy conditions, and sustain the denial based upon the failure of the Assignor to appear for an Independent Medical Examination. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing. Therefore, the Applicant's claim is 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, Amanda R. Kronin, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

03/08/2021

(Dated)

Amanda R. Kronin

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:
d1b47ed2c69d406c443227c9b7652197

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 03/08/2021