

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rockaway Park Medical, P.C. (Applicant)	AAA Case No.	17-20-1163-1384
- and -	Applicant's File No.	401209, 401226, 407051, 407261, 410472, 410515
State Farm Mutual Automobile Insurance Company (Respondent)	Insurer's Claim File No.	32B5241Z7
	NAIC No.	25178

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 05/28/2021
Declared closed by the arbitrator on 06/02/2021

David Forman, Esq. from Leon Kucherovsky Esq. participated by telephone for the Applicant

Michael Eder, Esq. from McDonnell Adels & Klestzick, PLLC participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 980.39**, 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

The claimant was the 31 year-old female driver of a motor vehicle that was involved in an accident on 9/19/19. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue are services provided by Applicant on 9/23/19, 12/11/19, and 1/22/20.

4. Findings, Conclusions, and Basis Therefor

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

The claimant was the 31 year-old female driver of a motor vehicle that was involved in an accident on 9/19/19. The claimant reportedly injured her neck, left shoulder, and low back. There was no reported loss of consciousness. There were no reported lacerations or fractures. Following the accident the claimant was transported to Manhasset Hospital where she was evaluated, treated, and released. On 9/23/19 the claimant presented to Noel Howell, M.D. of Rockaway Park Medical, P.C. (Applicant) with complaints of non-radiating neck pain, left shoulder pain, and non-radiating low back pain. Cervical examination revealed moderate tenderness and muscle spasms. Range of motion was restricted in all planes (quantified). Cervical Distraction and Jackson's Compression were positive. Lumbar examination revealed moderate tenderness and muscle spasms. Range of motion was restricted in all planes (quantified). Left shoulder examination revealed clavicular tenderness. The claimant was recommended for MRIs (cervical spine and lumbar spine) and physical therapy. The claimant was prescribed Naproxen 500mg and Flexeril 10mg. Dr. Howell supervised Outcome Assessment (OSWESTRY) Testing (OAT). On 9/23/19 the claimant presented to Nu Health Acupuncture, P.C. with a pale red tongue with a thin white coating and a normal, middle, wiry and tight pulse. The claimant was initiated on acupuncture and cupping. On 12/11/19 Dr. Howell conducted a follow-up examination and supervised OAT. On 1/22/20 Dr. Howell conducted a follow-up examination and supervised OAT. At issue are the services provided by Applicant on 9/23/19, 12/11/19, and 1/22/20.

At issue is billing for three dates of service (DOS): 9/23/19 (that was received on 10/14/19 and verification was timely requested on 10/23/19 and 11/2/19), 12/11/19 (that was received on 1/10/20 and verification was timely requested on 1/16/20 and 2/21/20) and 1/22/20 (that was received on 2/14/20 and verification was timely requested on 2/25/20 and 4/1/20). As to the billing for DOS 9/23/19 (totaling \$385.63) Respondent timely denied reimbursement for this billing on 2/27/20 asserting that Applicant failed to comply with outstanding verification within 120 days from the initial requests, pursuant to 11 NYCRR 65-3.5(o), which Applicant refutes. The denial provided that an applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, shall submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. As to the other DOS Respondent maintains that "Rockaway Park Medical's claim must be denied as premature as the 120 days had not yet run at the time of filing the instant arbitration."

The general rule is set forth in 11 NYCRR §65-3.8(c), which states that "within 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part." This 30-day time period commences when the application for No-Fault benefits is complete, unless this time is extended by way of a demand for further verification of a claim, per 11 NYCRR §65-3.5. As such, a claim need not be paid or denied until all demanded verification is provided. See: *Nyack Hospital v. General Motors Acceptance Corp.*, 27 A.D.3d 96, 808 N.Y.S.2d 399 (2d Dept. 2005), mod'd on other grounds, 8 N.Y.3d 294, 832 N.Y.S.2d 880 (2007). Furthermore, 11 NYCRR §65-3.5 (c) provides that "the insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested."

In the instant matter, the parties stipulated that the verification requests for the instant billing were generated following the Examinations Under Oath of the Applicant provider, which were conducted on 8/24/16 and on 12/21/16. The various allegations made by Respondent are summarized in the affidavit of SIU Investigator Alicia Teneyck, which was uploaded and reviewed. She explained in detail how Dr. Howell's EUO testimony raised questions regarding whether the ownership, control and operation of Applicant complies with applicable New York State licensing laws. On 3/3/20, Applicant's counsel responded (albeit partially) to the additional verification requests and interposed objections with regard to some of the items requested. There was also a similar response dated 1/24/20. Applicant's counsel argues that the post-EUO requests for additional verification were a "fishing expedition" with no reasonable basis. I respectfully disagree. Applicant's various objections were addressed by Respondent's counsel by correspondence dated 3/19/20.

Respondent considered each of Applicant's objections and persuasively challenged the case law cited by Applicant in their response. As noted in *Andrew Carothers MD v. Progressive Insurance Company*, supra, fraud is not an element. "In order to determine whether or not [applicant] was in material breach of the foundational rule for professional corporation licensure - namely that it be controlled by licensed professional - was enough to render [applicant] ineligible for reimbursement under 11 NYCRR§ 65 - 3.16 (A) (12)." In order to make such a determination, Respondent reasonably requested documentary verification. I find that Applicant's response to verification does not constitute substantial compliance. An insurer is not required to pay or deny a claim upon receipt of a partial response to a verification request. *Compass Medical, PC v. Travelers Insurance Company*, 53 Misc. 3d 136 (A), 2016 NY Slip Op 51441 (U) (App. Term 2d, 11th and 13th Districts 2016). Respondent's denial of DOS 9/23/19 is sustained; **billing totaling \$297.38 for DOS 1/10/20 and billing totaling \$297.38 for DOS 2/14/20 is dismissed without prejudice.**

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 Nassau

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

06/25/2021
(Dated)

Charles Blattberg

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:
ef5527e31238858b2edbd9058dc48795

Electronically Signed

Your name: Charles Blattberg
Signed on: 06/25/2021