

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rutland Medical, PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-18-1113-3876

Applicant's File No. RFA18-226785

Insurer's Claim File No. 522969R36

NAIC No. 25178

ARBITRATION AWARD

I, Bryan Hiller, 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: Assignor

1. Hearing(s) held on 01/06/2021, 03/09/2021, 05/26/2021,
08/31/2021
Declared closed by the arbitrator on 08/31/2021

Ryan Woodworth, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

Julie Linwood, Esq. from McDonnell Adels & Klestzick, PLLC participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,300.66**, 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

Whether Respondent's denials based on the "120 day rule" for verification, should be sustained?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement, along with interest and counsel fees, under the No-Fault Regulations, for the costs associated with upper and lower EMG-NCV testing performed on April 4, 2018 in connection with injuries sustained by Assignor in a motor vehicle accident on February 5, 2018. The electrodiagnostic testing at issue was denied on the basis of the 120 day rule. This decision is based upon the written submissions of counsel for the respective parties as well as oral arguments at the August 31, 2021 hearing. All denials were timely.

Assignor, a then 44 year old male driver, was involved in an automobile accident on February 5, 2018. Assignor was treated at the scene by EMS but did not go in an ambulance or to the emergency room. Due to persistent symptomology following the accident, Assignor came under the care of multiple conservative care providers. When symptoms persisted despite treatment, Assignor was referred to Applicant Rutland Medical, PC for an electrodiagnostic evaluation. The EMG-NCV testing at Applicant Rutland Medical, PC on April 4 2018 is at issue in this matter and the notes related to the testing are in the Record.

I find that Applicant established a prima facie case of entitlement to reimbursement of its claim by timely submitted valid bills for the electrodiagnostic testing in question (see *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Since Respondent's denials were timely, it was within its rights to assert that further treatment was medically unnecessary (see *Liberty Queens Medical, P.C. v. Liberty Mutual Insurance Co.*, 2002 NY Slip Op 40420(U), 2002 WL 31108069 (App. Term 2d & 11th Dists. June 27, 2002).

Applicant seeks reimbursement for the April 18, 2018 testing following a motor vehicle accident on February 14, 2018. These bills were timely denied based on failure to respond to verification requests within 120 days. Applicant's principal Mr. Moy and before him Dr. Surya appeared for a series of EUOs in 2018. Respondent's SIU investigator attests in an affidavit that Respondent was investigating Applicant's eligibility to receive no fault benefits based on suspicion of ownership and control by laypersons, fee-splitting arrangements and predetermined protocols for treatment.

Respondent issued verifications dated November 1, 2018 and December 5, 2018 following the conclusion of the EUO of Dr. Marvin Moy on October 23, 2018, who testified on behalf of Applicant. Counsel for Applicant did not challenge the timeliness of the verification letters at issue. The verifications sought the following:

1. Tax forms issued by Rutland Medical reflecting income, compensation and/or profits paid to Marvin Moy from 2013 to the present including but not limited to W-2s, 1099s and K-1 forms.
2. Rutland Medical's federal and New York state tax returns as well as duly executed authorizations to obtain same from 2013 to the present.
3. Copies of W-2s and 1099s for support staff and all persons who provided and/or supervised the healthcare services at Rutland Medical's four treatment locations:

145 E. 98 Street, Brooklyn, NY; 71 South Central Avenue, Valley Stream, NY; 135-25 79th Street, Howard Beach, NY and 951 Brook Avenue, Suite 203, Bronx, NY from 2013 to the present.

4. All lease agreements for use of space at 145 East 98 Street, Brooklyn New York and cancelled checks establishing payments including but not limited to the lease agreement between Bermuda Realty Corp. Island Realty Corp., and Rutland Medical, from 2013 to the present. 5. All lease agreements for use of space at 71 South Central Avenue, Valley Stream, NY 11580 and cancelled checks establishing payments including but not limited to the lease agreement between SCA Realty, and Rutland Medical, from 2015 to the present.
5. All lease agreements for use of space at 135-25 79th Street, Howard Beach, NY and cancelled checks establishing payments including but not limited to the lease agreement between JSB2 Realty, (Joey Bawabeh) and Rutland Medical, from 2016 to the present.
6. All lease agreements for use of space at 951 Brook Avenue, Suite 203, Bronx NY including but not limited to the lease agreement between MBX, LLC and Rutland, MBX, LLC and Manoelribeiro Pain Management Medicine, PC including addendums executed at the time of purchase and cancelled checks establishing payments from 2016 to the present.
7. The Asset Purchase Agreement between Rutland Medical/Marvin Moy MD and Manuel Ribiero/Manoelribeiro Pain Management Medicine, PC for the practice located at 951 Brook Avenue, Bronx, New York as well as cancelled check(s) or any other proof of payments.
8. The Asset Purchase Agreement for Sun Medical Care of Nassau, PC as well as the cancelled check(s) and/or receipt from wiring of funds establishing proof of payment.
9. Any and all lease agreements between Rutland Medical and providers rendering services at 145 East 98 Street, Brooklyn New York including but not limited to: Metro Pain Specialist, PC, Andrew Dowd, MD, Metrocare, Medical PC., Metro Pain Specialists, PC, Harvey Manes, MD, Interdependent Acupuncture, PC and Body Acupuncture Care, PC from 2013 to the present as well as proof of payment including but not limited to cancelled checks for same
10. Any and all lease agreements between Rutland Medical and providers rendering services at 71 South Central Avenue, Valley Stream 11580 including but not limited to Acupuncture Works, PC, Metrocare Medical, PC, Andrew Dowd, MD and Metro Pain Specialists, PC from September, 2015 to the present as well as proof of payment including but not limited to cancelled checks for same.
11. Any and all lease agreements between Rutland Medical and providers rendering services at 135-25 79th Street, Howard Beach, NY, including but not limited to Acupuncture Works, PC, Metrocare Medical PC, and Soul Radiology, (Dr. Wiener) from December 2016 to the present as well as proof of payment including but not limited to cancelled checks for same.
12. Any and all lease agreements between Rutland Medical and providers rendering services at 951 Brook Avenue, Suite 203, Bronx, NY 10451, including but not limited to Manoelribeiro Pain Management Medicine, PC, Arcadia Acupuncture, PC and Interdependent Acupuncture, PC from 2016 to the present as well as proof of payment including but not limited to cancelled checks for same.

13. All billing and collection agreements between Rutland Medical and BH400, Soft 88, Gulya Zulunov, and any other entity that has provided billing and collection services for Rutland Medical as well as all invoices, statements and cancelled checks establishing payment to BH400, Soft 88, Gulya Zulunov and any other entity that provided billing and collection services for Rutland Medical from 2013 to the present.
14. All documents regarding the relationship between Rutland Medical and 5 Boro Transportation, Melbourne Transportation or any other entity that provided transportation services for Rutland Medical including but not limited to; written contracts or agreements, statements, invoices and cancelled checks establishing payment by Rutland Medical for transportation services, as well as each entity's business address and phone number from 2015 to the present.
15. Bank account statements, account registers, cancelled checks and ledgers from TD Bank, Chase Bank and any other financial institution where Rutland Medical has conducted banking activities from 2013 to the present.
16. All contracts and agreements between All Star Rehab, Top Rehab and/or Metro Care Staffing LLC and Rutland Medical and any other employment agency that provided staffing to Rutland Medical as well as all invoices, statements and cancelled checks establishing payment to All Star Rehab, Top Rehab and/or Metro Care Staffing LLC and any other entity that provided staffing for Rutland Medical.
17. Profit and Loss Statements, balance sheets and general ledgers for Rutland Medical from 2013 to the present.
18. Any and all agreements or contracts between Rutland and Medical Reimbursements Inc. and/or Medical Reimbursement Consultants, Inc. ("MRC") executed after January 1, 2015, including but not limited to: addendums, exhibits to agreements as well as all invoices, statements and cancelled checks establishing any all payments to/from Rutland and MRC from 2013 to the present.
19. Any and all "Clean Claims Receivable" lists provided to MRC by either Rutland or BH400 from 2013 to the present including proof of payment to/from Rutland and MRC for same.
20. All documents relied on by Rutland and/or MRC to determine calculation of payments under the agreements dated January 1, 2013 and January 1, 2015 including but not limited to: ledgers, balance sheets, GreenBills statements, spreadsheets and correspondence between BH400 and MRC from 2013 to the present.
21. A copy of Rutland Medical's quarterly and year end payroll reports from Brands Payroll from 2013 to the present.
22. Address of the Brooklyn P.O. Box currently used by Rutland for receipt of mail.

By letter dated March 6, 2019, over 120 days from the date upon which the verification was first requested, Applicant's then-counsel issued the following response: In response to your Post EUO demand, please find the following responses:

1. These documents have already been submitted to State Farm Insurance. Please see attached CD for Dr. Moy's K-1.
2. These documents have already been submitted to State Farm Insurance.

3. Please see attached CD for said records.
4. Please see attached CD for said records.
5. Please see attached CD for said records.
6. Please see attached CD for said records.
7. Please see attached CD for said records.
8. Please see attached CD for said records.
9. Please see attached CD for said records. 1
0. Please see attached CD for said records.
11. Please see attached CD for said records.
12. Please see attached CD for said records for Acupuncture Works, P.C and Metrocare. Medical, P.C..
13. Please see attached CD for said records.
14. Please see attached CD for said records.
15. Please see attached CD for said records.
16. Please see attached CD for said records.
17. Please see attached CD for said records.
18. Objection.
19. Please see attached CD for said records.
20. Objection
21. Objection. 2
2. Please see attached CD for said records.
23. The Brooklyn P.O Box address is P.O. Box [XXXXXX], Brooklyn, New York 11233.

My client has acted in good faith and believes this now closes the verification for all open claims. Kindly pay or deny the open claims within 30 days as per the insurance regulations.

Thank you for your courtesy and cooperation."

Applicant's letter brief stated that this response "substantially complied with the extensive documentation that was demanded by the respondent." Applicant's letter brief stated that these documents were not annexed "as they are well in excess of 1,100 pages of documentation, but they are available upon request [,] see also Applicant's Arbitration Submissions."

The parties continued to send correspondence to each other with respect to the verifications through early 2020, and, as set forth in full in its letter brief, Applicant provided to Respondent additional documents.

Respondent set forth detailed allegations which were supported by numerous exhibits in support of its contention that although Dr. Moy is listed as the owner of Applicant Rutland on the certificate of incorporation, Rutland actually owned and/or controlled by two other individuals, individually and through companies they own. Respondent asserted that with the knowing and willful participation of Dr. Moy, these entities, which it refers to as the "Clinic Controllers," unlawfully created Rutland and that in essence, Dr. Moy is just a "straw owner," "with no real ownership interest in or control over Rutland." Respondent asserted that with Dr. Moy acting as the façade, the Clinic Controllers were able to unlawfully own Rutland and control all aspects of its operations, including its finances and treatment it allegedly provided. Respondent's letter brief detailed its allegation that the Clinic Controllers used various companies such as billing companies and transportation companies as vehicles to skim the profits from Applicant and channel the money to themselves. Respondent further asserted that the Clinic Controllers hired independent contractors for financial reasons, the use of which render a healthcare provider ineligible for No-Filed payments and that it was falsely represented that the services billed were performed by Rutland's employees.

Respondent asserted that in light of Moy's EUO testimony, the verifications were tailored to verify whether Rutland was a properly licensed facility entitled to collect No-Fault benefits. The verification sought information concerning Rutland, its ownership, operations, licensing and financial relationships. Respondent asserted that this information was relevant to establish Rutland's revenues and who obtained the most benefit from these monies; who is paid what and by whom; and the financial relationships among Rutland and Moy and to unlicensed individuals and what the unlicensed individuals' true roles were with respect to Rutland's finances, and the extent to which Rutland is using independent contractors.

In support of its position, Respondent relies on its letter brief and numerous exhibits submitted therewith, including EUO testimony by Dr. Moy, which, Respondent asserted, contained numerous inconsistencies and inadequate responses. Respondent submitted an affidavit by Kenneth Firth, and employee in its Special Investigative Unit, dated 06/17/20 which explained that Respondent began to evaluate claims submitted to it by Rutland which raised questions concerning Rutland's right to be compensated. Respondent requested an EUO of Rutland to verify (i) whether Rutland's services were provided pursuant to arrangements with others complies with New York State licensing laws; (ii) whether the ownership, control and operation of Rutland complies with New

York State licensing requirements; (iii) whether the goods and/or services provided to State Farm insureds were medically necessary or provided pursuant to a pre-determined treatment protocol in a manner designed to maximize the healthcare providers profit rather than to benefit the patient; and (iv) whether services billed by Rutland are actually performed by independent contractors. The investigator stated that Dr. Moy's testimony did not answer Respondent's questions and therefore, additional verification was requested. This affidavit set forth in detail Respondent's concerns with respect to the true ownership of Rutland and the bases thereof. The affidavit discussed an entity named Sun Medical, where Dr. Moy worked, and an individual named Dr. Gerald Surya, whom the affiant stated "purportedly" owned Sun Medical. The affidavit noted that Respondent had obtained a declaratory judgment on May 11, 2020 which decreed that Sun Medical was not eligible to receive payment for any bills which it had submitted to Respondent because it was unlawfully incorporated, owned and/or controlled by unlicensed persons. The affidavit stated that following the arrest of Dr. Surya in 2015, "[a]lmost immediately thereafter, in or about October 2015, Moy and Rutland were substituted for Surya and Sun Medical at the Valley Stream location," but that at various EUOs conducted of Moy, he gave conflicting testimony as to the amount of the purchase price. Respondent also cited to inconsistencies in testimony with respect to whether and when an Asset Purchase Agreement was created. The affidavit also detailed Respondent's allegations with respect to purported pre-determined treatment protocols, and opined that "In my experience, this pattern of care strongly suggests that Rutland is controlled by an unlicensed person or persons where profit is the primary concern, raising further questions regarding whether Moy actually owns or controls Rutland." The affidavit further stated that Moy's EUO testimony revealed that he lacked knowledge regarding the operations, agreements, and finances of Rutland, even though he is allegedly its sole owner, and raised additional questions as to the involvement of other individuals in its operations. The affidavit also asserted that Moy's testimony indicated that he had little knowledge of two factoring agreements entered into by Rutland with MRC, which was owned by one of the persons alleged to actually own or control the company.

After considering the arguments of counsel at the hearing of this matter, the legal and factual arguments raised in the letter briefs, and the relevant evidence submitted in this case, I find that Respondent has established that the verifications were properly issued, and that it has established that there were "good reasons" to issue the verifications, based on its investigation into whether Rutland was in fact owned or controlled by non-physicians, and whether Rutland sought reimbursement for services provided by independent contractors, in contravention to the No-Fault Regulations. 11 NYCRR 65-3.2 (c). Respondent's investigator set forth the bases for its beliefs, as set forth above, which demonstrate Respondent's basis for its belief that Applicant may be owned and controlled by laypersons, and set forth the reasons why Respondent sought to obtain the documents set forth in the verifications. Respondent persuasively argued, in its letter brief and at the hearing, why these documents were needed in its attempt to ascertain who controls Applicant, and whether Applicant is in fact owned and controlled by Dr. Moy, as well as whether Applicant may have been using independent contractors for services for which it was submitting claims to Respondent. Respondent supports its contentions through the exhibits submitted in this case.

I find that Applicant has not established that its 03/06/19 verification response met its obligations under the Regulations. 11 NYCRR 65-3.5(o). The 03/06/19 letter references a CD, the contents of which Applicant did not submit into evidence in this case. I find therefore that Applicant did not submit evidence sufficient to clearly establish what its responses to the verifications were, and therefore whether it complied with its obligations under the regulations. Applicant's statement in its letter brief that these documents were not included in its submission "as they are well in excess of 1,100 pages of documentation, but they are available upon request [,] see also Applicant's Arbitration Submissions," is inapposite. Applicant initiated this Arbitration nearly one year ago. It is the parties' responsibility to timely submit evidence sufficient to establish its contentions. At the hearing of this matter, Applicant's 05/16/19 letter to Respondent was reviewed in an attempt to ascertain what Applicant provided to Respondent in its 03/06/19 response. However, I find that this letter, although more detailed than the 03/06/19 letter, lacks clarity with respect to what was included in Applicant's 03/06/19 response, and I find the sworn affidavit by Respondent's forensic accountant is persuasive with respect to what items remained outstanding. "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. . . ." 11 NYCRR 65-4.5 (o) (1). Moreover, I find that Applicant failed to provide written proof providing "reasonable justification" for its failure to comply with the verification requests as it is obligated to do pursuant to the No-Fault Regulations. 11 NYCRR 65-3.5(o). Applicant's 03/06/19 verification response letter stated "objection" with respect to three of the items requested, but asserted that it was in fact providing responses to the remainder of the items sought, and asserted that one item requested had previously been provided, but did not provide "reasonable justification" for its failure to provide the items which Respondent asserts remain outstanding.

Applicant asserts that once Respondent received the verification that the time to pay or deny the within claim was no longer tolled and it had a duty to act. On 03/20/19 Respondent denied the claims pursuant to the 120-day Rule. In its letter brief, Applicant questioned the timeliness of the denials, and cited to *Chapa Products Corp. v. MVIAC*, 2019 N.Y.Slip Op 29341 (App. Term, 2d Dept 2019), where the court held that "the deadline to issue a denial based upon the ground that applicant failed to provide complete verification . . . is 150 days after the initial request for verification - or 30 days after the insurer is permitted to conclude that there was a failure to comply with a verification request, i.e., the on which the 120-day period ends." However, I do not find that this decision, which reads into the Regulations a "deadline" by which an insurer must deny a claim based on open verifications, stands for the proposition for which Applicant asserts, that the denials in this case not timely issued, and I find that the denials were issued in accordance with the Regulations. I find that Respondent has established that more than 120 days had elapsed after its initial verification and that Applicant had not submitted all such verification under its control or possession, or written proof providing reasonable justification for its failure to comply, and that the verification letters so advised Applicant. 11 NYCRR 65-3.8(b)(3).

In addition to asserting that its 03/06/19 verification response constituted substantial compliance with the verifications as required by the Regulations, Applicant also asserts

that because its 03/06/19 response occurred before denials were issued, Respondent's 120-day denial was improper and "should be considered a nullity." Applicant stated: "Respondent had an obligation to permit the Applicant to respond to their verification requests before denying the claims. Respondent did not even give the Applicant the opportunity to ameliorate the alleged deficiencies in their verification responses before issuing denials. Applicant asserts that this invalidates Respondent's 120 day denials." Applicant asserted that the correspondence which occurred thereafter "in effect perpetuated or continued verification between the parties."

Applicant cited to the Regulations and case law for the proposition that Respondent should not issue a denial while verification a request is pending. I do not find that the authority relied upon by Applicant supports the proposition that Respondent was not entitled to issue a denial pursuant to the Regulations. As stated in full in 11 NYCRR 65-3.8(b)(3), which was cited to by Applicant in support of its position on this issue, "Except as provided in subdivision (e) of this section, an insurer shall not issue a denial of claim form (NYS form NF-10) prior to its receipt of verification of all of the relevant information requested pursuant to sections 65-3.5 and 65-3.6 of this Subpart (e.g., medical reports, wage verification, etc.). However, an insurer 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, provided that the verification request so advised the applicant as required in section 65-3.5(o) of this Subpart." (emphasis supplied).

I am not persuaded by Applicant's position that the 03/15/19 response and subsequent correspondence between the parties rendered the denials nullities. Moreover, Applicant stated in its 03/06/19 verification response that "My client has acted in good faith and believes this now closes the verification for all open claims. Kindly pay or deny the open claims within 30 days as per the insurance regulations." Applicant thus represented to Respondent that the response to the verifications was complete, and requested that Respondent pay or deny the claims, and Respondent subsequently denied the claims.

Lastly, Applicant also asserts that Respondent did properly responded to its subsequent responses. Because I find that the denials were properly issued, I find that this argument is without merit.

After reviewing the relevant evidence in this case, and upon consideration of the arguments raised by counsel at the hearing of this matter, I find that Applicant did not establish that it timely submitted all of the requested verification under its control or possession to Respondent within 120 days after the initial verification requests or timely submitted any written proof providing reasonable justification for its failure to comply. I find that Applicant's prima facie case of entitlement to compensation for its claim has been overcome by Respondent proving that it properly tolled the 30-day deadline, and properly issued the 120-day Rule denials of the claims on the basis that Applicant did not provide all of the requested verification. Applicant's claim is therefore denied in its entirety

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

09/03/2021
(Dated)

Bryan Hiller

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:
e4d1f895cc217864ba40bdfdf42ea10e

Electronically Signed

Your name: Bryan Hiller
Signed on: 09/03/2021