

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMedical I PLLC
(Applicant)

- and -

USAA General Indemnity Company
(Respondent)

AAA Case No. 17-20-1180-0922
Applicant's File No. RFA20-286369
Insurer's Claim File No. 019106518-002-000
NAIC No. 25941

ARBITRATION AWARD

I, Paul Keenan, 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 RW

1. Hearing(s) held on 08/17/2022
Declared closed by the arbitrator on 08/17/2022

Mohammad Anwar, Esq. from Russell Friedman & Associates LLP participated for the Applicant

Lindsey Korn, Esq. from Marshall Dennehey Warner Coleman & Goggin, P.C. participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$912.00**, 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

ASSIGNOR was injured in a motor vehicle accident November 15, 2019.

Applicant billed \$912.00 for MRI of the lumbar spine rendered December 18, 2019.
Respondent denied payment based on the following:

Pursuant to New York No-Fault Regulation 65-3.5(o), verification must be received within 120 calendar days from the date of the initial request. Because we have not timely received verification, New York No Fault benefits are denied.

4. Findings, Conclusions, and Basis Therefor

Submissions are available through ADR filings.

ASSIGNOR was injured in a motor vehicle accident November 15, 2019.

Applicant billed \$912.00 for MRI of the lumbar spine rendered December 18, 2019. Respondent denied payment based on the following:

Pursuant to New York No-Fault Regulation 65-3.5(o), verification must be received within 120 calendar days from the date of the initial request. Because we have not timely received verification, New York No Fault benefits are denied.

No-Fault regulations mandate that a written proof of claim for health service expenses are overdue if not paid or denied by the insurer within 30 calendar days (see Insurance Law §5106[a]; 11NYCRR §65-3.8[a]{1}). An insurer may toll the 30 day period by requesting additional verification of the claim within 15 business days from the receipt of the claim (see 11 NYCRR 65-3[b]). If the insurer has not received verification from the plaintiff within 30days of the initial request, the insurer may send a follow-up verification request by phone or mail within 10 calendar days (see 11 NYCRR 65-3.6[b]). An insurer may not issue a denial of claim form (NF-10) prior to its receipt of verification of all relevant information requested by the insurer (see Insurance Law § 5106[a]; 11 NYCRR §65-3.5[c]). However, an insurer may deny the claim after 120 calendar days if plaintiff does not provide all of the requested verification under its control or possession, or written proof providing reasonable justification for its failure to comply (see 11 NYCRR §65-3.5[o], for all claims submitted after 4/1/13. Also, an insurer's "non-substantive, technical or immaterial defect or omission, as well as an insurer's failure to comply with a prescribed time frame" shall not "negate an applicant's obligation to comply with the request or notice" (see 11 NYCRR §65-3.5[p], for all claims after 4/1/13." *Zwanger & Pesiri Radiology Group, LLP v. Mapfre Ins. Co.*, 56 Misc.3d 1213(A), 2017 N.Y.Slip Op. 50981(U) at 2 (Dist. Ct. Suffolk Co., James F. Matthews, J., June 14, 2017).

Included in submissions is respondent's timely request for additional verification. Respondent requested MRI report and referring physician's records.

Submissions reveal that respondent received the bill January 12, 2020 and requested verification January 15, 2020. On January 22, 2020 respondent acknowledged receiving the MRI report and requested detailed exam notes from Heoeun Kwun to assess medical necessity.

Respondent issued denial May 27, 2020.

Respondent's denial predicated upon the 120-day rule is untimely in that it is dated May 27, 2020 which is beyond 150 days after the Respondent sent its initial verification request on January 15, 2020. See Chapa Products Corp. v. MVAIC, 66 Misc.3d 16, 2019

N.Y. Slip Op. 29341 (App. Term 2 , 11 , and 13 Jud. Dists. 2019). As noted by the Court:

"{W}e hold that a denial of claim form issued following the expiration of the 150-day period after the issuance of the initial request for varication is a nullity with respect to that defense. Therefore, we find that the untimely denials issued in this case offer no basis to dismiss the complaint with prejudice."

In the instant matter the denial is untimely as it was issued beyond 150 days after the issuance of the first request. Denial based on the 120-Day Rule is not sustained.

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.

Medical		From/To	Claim Amount	Status
	CitiMedical I PLLC	12/18/19 - 12/18/19	\$912.00	Awarded: \$912.00
Total			\$912.00	Awarded: \$912.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/29/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant, 11 NYCRR 65-3-9c, LMK Psychological Services v. State Farm Mut. Auto Ins. Co., 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009); Hempstead General Hosp. v. Insurance Co. of North America, 208 A.D.2d 501, 617 N.Y.S.2d478 (2nd Dept. 1994); Smithtown General Hospital v. State Farm Mut. Auto Ins. Co., 207 A.D. 2d 338, 615 N.Y.S.2d 426 (2nd Dept. 1994). The end date for calculation of interest shall be the date of payment of the claim. Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall pay the applicant, the amount of interest at the rate of 2% per month, simple, and ending with the date of payment of the award.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay the applicant an attorney's fee equal to 20% of that total sum, subject to a maximum of \$1,360.00. See 11 NYCRR 65-4.6(d). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR Section 65-4.6(b).

- 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 Nassau

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

09/06/2022
(Dated)

Paul Keenan

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:
7ca54f7062247dc1a0fc735b805eabfc

Electronically Signed

Your name: Paul Keenan
Signed on: 09/06/2022