

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pedro Torres-Jimenez M.D.
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-22-1234-9624

Applicant's File No. FDNY21-51379

Insurer's Claim File No. 3218V390Z

NAIC No. 25143

ARBITRATION AWARD

I, Robyn McAllister, 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 01/26/2023
Declared closed by the arbitrator on 01/26/2023

Todd Fass, Esq. from Fass & D'Agostino, P.C. participated for the Applicant

Paul Wiedemann, Esq. from Bennett, Bricklin, & Saltzburg LLC participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,680.20**, 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 Applicant is entitled to reimbursement for performing an office visit and EMG/NCV testing for Assignor (PS), a 33 year-old female, in connection with treatment of injuries sustained in a motor vehicle accident on April 20, 2021, where Respondent sought additional Examinations Under Oath of Applicant's employees.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$2680.20 for performing an office visit and EMG/NCV testing on June 8, 2021 for Assignor (PS), a 33 year-old female, in connection with treatment of injuries sustained in a motor vehicle accident on April 20, 2021. Respondent did not issue a denial and instead sought additional Examinations Under Oath ("EUOs") of Applicant's employees after Applicant appeared for an EUO.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's requests for EUOs acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v. State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that Applicant's claim was not ripe for arbitration since Applicant's employees failed to appear for EUOs. I disagree. This issue previously has been addressed by multiple arbitrators who have concluded that Respondent's defense is without merit. I concur.

More specifically, Applicant appeared for an EUO on November 30, 2021. Following Applicant's appearance, Respondent requested EUOs of Applicant's billing service employee, Matthew Prince, NP and Dr. Richard Apple by letters dated December 16, 2021, January 28, 2022, February 22, 2022 and February 9, 2022, respectively. In response, Applicant submitted objection letters to the requests for additional EUOs. Respondent asserted that no one appeared for the scheduled EUOs on January 26, 2022, March 2, 2022, February 2, 2022, March 9, 2022, February 9, 2022 and March 16, 2022, respectively. Thus, Respondent argued that verification still was outstanding and Applicant's claim was premature. Conversely, Applicant argued that Respondent's requests for further EUOs were untimely and that Respondent failed to properly toll its time to pay or deny the claim in accordance with 11 NYCRR 65-3.5 and 65-3.6.

In *Pedro Torres-Jimenez M.D. v. State Farm Mutual Automobile Insurance Company*, 17-22-1234-5899 and 17-22-1234-9638 Arbitrator Abrams in addressing the same issue between the same parties stated as follows:

It is well settled that an insurer is not obligated to pay or deny a claim until it has received verification of all relevant information requested. See, Mount Sinai Hosp. v. Chubb Grp. of Ins. Companies, 43 A.D.3d 889, 843 N.Y.S.2d 634 (2 Dept. 2007); *nd Hosp. for Joint Diseases v. New York Cent. Mut. Fire Ins. Co.*, 44 A.D.3d 903, 844 N.Y.S.2d 371 (2 Dept. 2007); *nd New York & Presbyterian Hosp. v. Progressive Cas. Ins. Co.*, 5 A.D.3d 568, 569, 774 N.Y.S.2d 72 (2 Dept. 2004).

An insurer can extend or toll its time to pay or deny a claim by demanding verification within 30 days of receipt of the claim. Victory Med. Diagnostics, P.C. v. Nationwide

Prop. & Cas. Ins. Co., 36 Misc. 3d 568, 572, 949 N.Y.S.2d 855, 859 (Dist. Ct. 2012) citing *Nyack Hosp. v. General Motors Acceptance Corp.*, 8 N.Y.3d 294, 832 N.Y.S.2d 880, 864 N.E.2d 1279 (2007). No-fault regulations do not specifically define or limit the information or documentation an insurer may request through verification. In fact, the regulations provide that an insurer can request "... all items necessary to verify the claim directly from the parties from whom such verification was requested." 11 NYCRR 65-3.5(c).

Once verification has been received, an insurer has 30 days within which to make a determination on the claim. *Liberty Queens Medical, P.C. v. Tri-State Consumer Ins.*, 188 Misc.2d 835, 839, 729 N.Y.S.2d 882, 885 (Dist. Ct. Nassau Co. 2001). As long as a medical provider's documentation is arguably responsive to an insurer's verification request, the insurer must act within 30 days of the medical provider's response, or it will be precluded from presenting any non-coverage defenses; an insurer must affirmatively act once it receives a response to its verification request. *All Health Medical Care, P.C. v. Government Employees Ins. Co.*, 2 Misc.3d 907, 771 N.Y.S.2d 832 (Civ. Ct. Queens Co. 2004).

Requests for verification, however, are not without restraint. The regulations provide that an insurer should not "... demand verification of facts unless there are good reasons to do so." 11 NYCRR 65-3.2(c). Indeed, no-fault decisions require that good cause or a reasonable basis be shown to obtain further verification. See, *State Farm Mutual Insurance Co. v. Mallela*, 4 N.Y. 3d 313, 794 N.Y.S.2d 700 (2005) (in order for a request for verification to be valid concerning a request for applicant's bank records, tax returns, and licensing status, a respondent must "show good cause" by putting forth proof that demonstrates "behavior tantamount to fraud."); *Dynamic Medical Imaging P.C. a/a/o v. State Farm Mut. Auto. Ins. Co.*, 29 Misc. 2d 278, 2010 NY Slip Op. 20285 (Dist. Ct., Nassau Co. July 15, 2010); *A.B. Medical Services PLLC v. Highlands Insurance Co.*, N.Y.L.J., May 27, 2003 (Civ. Ct. New York Co. 2003) (the burden is on Respondent to prove that the verification requests are valid). See also, *Concourse Chiropractic, PLLC v. State Farm Mutual Ins. Co.*, 35 Misc.3d 1213(A), 2012 N.Y. Slip Op. 50676(U), (Dist. Ct. Nassau Co., Apr. 16, 2012); *Midborough Acupuncture P.C. v. State Farm Ins. Co.*, 21 Misc. 3d 10, 12 (App. Term, 2 Dept. 2008).

If an insurer asserts that the claim(s) are premature due to outstanding verification, the insurer must demonstrate that the verification request and follow-up verification request were timely issued, and that no response was received. *Compas Med., P.C. v. Praetorian*, 49 Misc 3d 129(A), 2015 NY Slip Op 51403(U)(App Term, 2 , 11 and 13 Jud. nd th, th Dists. 2015).

N.Y. Comp. Codes R. & Regs. tit. 11 §65-3(a)(1), regarding payment or denial of claims, states:

No-fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested pursuant to section 65-3.5 of this Subpart. In the case of an examination under oath or a medical examination, the verification is deemed to have been received by the insurer on the day the examination was performed.

Emphasis added.

Respondent acknowledged that Dr. Jimenez, Applicant, appeared for an EUO on November 30, 2021. After the EUO of Dr. Jimenez was completed, Respondent requested EUOs of Dr. Richard Apple, Matthew Prince, NP, and the employee who performed billing services for Applicant. Respondent stated that there was still outstanding information needed in order to resolve the issues with the EUO testimony and to verify if Applicant is entitled to receive No-Fault benefits. Respondent claims that it is still awaiting additional verification in the form of EUOs.

At the hearing, counsel for Applicant argued, based upon N.Y. Comp. Codes R. & Regs. tit. 11 §65-3(a)(1), that verification was deemed "received" on November 30, 2021 when Dr. Jimenez appeared and completed his EUO. Counsel argued that Respondent had 30 days from November 30, 2021 to either pay or deny Applicant's claims. I agree in this instance. The regulations clearly state that an EUO verification is deemed received by the insured the day the EUO was performed. Here, based upon strict compliance with the regulations, Respondent had until December 30, 2021 to either pay or deny Applicant's claim; it did neither. Based on the foregoing, Respondent's outstanding verification defense cannot be sustained.

*In addition, in *Pedro Torres-Jimenez M.D. v. State Farm Mutual Automobile Insurance Company*, 17-21-1214-9341, 17-22-1234-5890 and 17-22-1234-9637, Arbitrators Obiajulu, Eck and Schuchmann, respectively, concluded that the doctrine of collateral estoppel should apply since Respondent had a full and fair opportunity to contest Arbitrator Abrams determinations. See *Triboro Quality Medical Supply, Inc. v. State Farm Mutual Automobile Ins. Co.*, 26 Misc.3d 131(A)(App. Term 2d, 11th & 13th Dists. 2012). I agree.*

In any event, even if the doctrine of collateral estoppel was not applied, I am persuaded by Arbitrator Abrams and Obiajulu's analyses in the above-referenced cases, and for the reasons noted above, I find that Respondent's defense is without merit and Applicant is entitled to reimbursement for the services provided.

Accordingly, Applicant is awarded \$2680.20, the entirety of its claim.

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
	Pedro Torres-Jimenez M.D.	06/08/21 - 06/08/21	\$2,680.20	Awarded: \$2,680.20
Total			\$2,680.20	Awarded: \$2,680.20

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/30/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from December 30, 2021, thirty days from Applicant's appearance at the EUO, for the Claim awarded above at a rate of 2% per month, simple, 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

The insurer shall pay an attorney's fee in accordance with 11 NYCRR 65-4.6.

- 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 Westchester

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

01/30/2023

(Dated)

Robyn McAllister

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:
41908530e7590891d5dc9b26e4dfe53a

Electronically Signed

Your name: Robyn McAllister
Signed on: 01/30/2023