

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NYC Medical Treatments PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-21-1207-3034

Applicant's File No. RFA21-297866

Insurer's Claim File No. 3212K69S

NAIC No. 25178

ARBITRATION AWARD

I, Evelina Miller, 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: KT

1. Hearing(s) held on 01/11/2023
Declared closed by the arbitrator on 01/11/2023

Ryan Woodworth Esq from Russell Friedman & Associates LLP participated virtually for the Applicant

Tara Gutman Esq from Goldberg, Miller and Rubin, P.C. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,757.57**, 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 dispute arises from the underlying automobile accident on October 11, 2020, in which the Assignor (KT), a 43-year-old-male was involved. Thereafter, Assignor sought private medical attention, and was eventually evaluated by Applicant with complaints of pain in the neck, lower back, and the right shoulder. Eventually patient was recommended to undergo conservative care including X-ray of the shoulder and outcome assessment testing which were performed on the patient on 10/12/20 through 2/26/21. Respondent denied Applicant's bills for dates of service of 10/12/20 through 2/26/21 based on Applicant's failure to comply with outstanding verification within 120 days.

The issue presented at hearing is whether Respondent properly denied Applicant's bills based on Applicant's failure to comply with outstanding verification within 120 days.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in MODRIA which are maintained by the American Arbitration Association. These submissions are the record in this case. My decision is based on my review of that file, as well as the arguments of the parties at the hearing. At the time of the hearing all the parties appeared via ZOOM.

I find that Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and 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 Co.*, 5 A.D.3d 742, (2d Dept., 2004). Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See *Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004, NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

Upon receipt of Applicant's bills for dates of service of 10/12/20 through 2/26/21 based on Applicant's failure to comply with outstanding verification within 120 days.

The same issue as before me has been presented before Arbitrator Teresa Girolamo Esq in 17-21-1227-3148, *NYC Medical Treatments P.C. v. States Farm Mutual Auto Insurance Company*, AAA 17-21-1209-4023 *NYC Medical Treatments PC/ A.A. C-S v. State Farm*, the bills were timely denied based upon the 120 day rule. For the second case of AAA 17-21-1209-4024 *NYC Medical Treatments PC/ A.A. C-S v. State Farm*, the bills were not denied. The third case was AAA 17-21-1209-4026 *NYC Medical Treatments PC/ A.A. C-S v. State Farm* where 4 out of 5 bills were denied based upon the 120 Day Rule. In all those cases Arbitrator Girolamo held the following:

"In reviewing the extensive evidence in this case, including an Affidavit of Aleksandr Mostovoy, documenting sworn statements regarding the purchase of a turnkey chiropractic business from Simon Davydov; subleasing a portion of the Hempstead Clinic from Michael Jacobi, M.D., owner of Epione Medical PC; also is the owner of Applicant herein, NYC Medical Treatments PC; fraudulent billing practices by Davydov, and his associates at the clinic who were "illegally prioritizing the billing for Jacobi at the expenses and financial determinant of my companies" . These lay people were also providing new patients to the entities at the Hempstead location.

There are arbitration awards submitted by both parties in support of each parties position of which I have reviewed all such awards. At the time of the hearing,

Respondent advised that in many of the cases she did not have in her possession the Affidavit of Aleksandr Mostovoy for the Arbitration hearings.

In reviewing the extensive evidence offered by both parties, of note in this case as in all 4 cases, Respondent filed a Declaratory Judgment Action in Queens County, under Index 719831/2021, State Farm v. NYC Medical Treatments. According to the Complaint NYC Medical is owned by Michael Jacobi, D.O. Michael Jacobi, DO also purportedly owns Epione Medical PC. and that NYC Medical replaced Epione Medical. At paragraph 9 healthcare service providers are not eligible for NO Fault Benefits if they engage in self-referrals, kickbacks, or other illegal payments in violation of New York's Public Health Law. Starting at paragraph 16 of the Complaint, State Farm addresses the reasons for verification.

At paragraph 18 of the Complaint State Farm advises the court that Epione Medical was sued by GEICO based on fraud-based allegations, "including billing for unnecessary and fraudulent services. See GEICO v. Epione Medical, et al. (E.D.N.Y. 1:18-cv-03159). These providers then stopped operating at the Hempstead Clinic and were replaced by three (3) new professional corporations, which are NYC Medical, a new professional corporation that provides acupuncture services, and a new professional corporation that provides chiropractic services. When the change-over occurred, the office staff switched over to the new entities and the existing patients became the patients of these new professional corporations, including NYC Medical."

I find the allegations in the complaint, if true, quite concerning. In reviewing e-courts, the matter was marked fully submitted by Justice Ulysses. B. Leverett on 6/1/2022. This action addresses the arguments of the parties in all four of these cases.

Having reviewed the evidence including the Arbitration awards, I find the decision of Arbitrator Maria Schuchmann, in the case of 17-21-1227-9668 NYC Medical Treatments/ K.C. v. State Farm, which was decided on 6/7/2022. In that case the identical issues were presented, in that the bills were denied on the 120 Day Rule.

I note that the Award by Arbitrator Maria Schuchmann was just 6 days after the motion in Supreme Court was marked submitted.

In that case, Arbitrator Maria Schuchmann, following a review of the evidence and having considered the arguments of the parties found as follows:

Claimant was involved in a motor vehicle accident on March 31, 2021. Thereafter, she began treating at Applicant's facility due to injuries sustained in that accident.

Upon receipt of this claim, Respondent issued a denial claiming that Claimant failed to provide requested verification within 120 days. Thereafter, Respondent brought a Declaratory Judgement action in Supreme Court, Queens County under Index No.: 719831/2021 naming Applicant as one of the numerous defendants. The basis of the claim questions Applicant's ownership, management and eligibility to collect No-Fault benefits.

It is noted that Applicant has appeared in this proceeding and that discovery is underway. Based upon the pending action, I find that any decisions on this claim should await a decision on that action.

Accordingly, this claim is denied without prejudice.

Based upon the existence and the fully submitted motion in the Supreme Court case, as with the case before Arbitrator Maria Schuchmann, and this case is therefore dismissed without prejudice."

The same issue has been presented for adjudication before Arbitrator Nancy Kramer Avalone in AAA Case # 17-22-1237-6543 NYC Medical Treatments P.C. v. States Farm Mutual Auto Insurance Company. In this case Arbitrator held the following:

"Upon receipt of the bills at issue, Respondent issued respective denial of claim forms advising that the Claimant failed to provide requested verification within 120 days.

Subsequently, on 09/02/2021, Respondent brought a Declaratory Judgement action in The Supreme Court of the State of New York, Queens County, Index No.: 719831/2021, asking the court to determine that the Applicant, along with other medical providers, were not eligible to receive NY No-Fault reimbursement.

The basis of the action related to the Applicant's ownership, management and eligibility to collect No-Fault benefits.

It is noted that Applicant has appeared in this proceeding and that discovery between the parties is underway.

Based upon the pending action, the undersigned arbitrator finds that any decisions on this claim should await a decision from the court.

Accordingly, this claim is dismissed without prejudice. This award is in full disposition of all claims for No-Fault benefits presently before this Arbitrator."

In this case, the facts are the same as presented in front of Arbitrator Nancy Kramer Avalone, Arbitrator Shuchmann as well as Arbitrator Teresa Girolamo Esq. Following an EUO of the Applicant on 6/30/20 Respondent issued verification requests to Applicant seeking:

- Copies of the complete patient charts for all patients identified in Appendix "A";
- Copies of all sign in sheets;
- Copy of the data stored electronically for all the electrodiagnostic tests for the patients identified in Appendix "A";
- Copies of the lease(s) for the locations where NYC Medical has operated;
- Copies of all EUO transcripts of NYC Medical taken by other insurance carriers;
- Copies of the agreement(s) with any and all billing companies;
- Copies of the agreement with Billing and Collection, LLC;

- Copies of all records reflecting payments to Billing and Collection, LLC or any other company which provided billing services;
- Copies of all records reflecting rent credits given to Billing and Collection, LLC or any other company which provided billing services;
- Copies of all records reflecting payments from Oceana Chiropractic; - Copies of all records reflecting payments from Rehab Acupuncture;
- Copies of all records reflecting payments from Apak Chiropractic;
- Copies of all records reflecting payments from NYC Sports Acupuncture;
- Copies of all records reflecting payments from Dr. Richard Apple or any company owned by Dr. Apple;
- Copies of all records reflecting payments from Dr. Leonid Reyfman or any company owned by Dr. Reyfman;
- Copies of all records reflecting payments from Dr. Kenneth McCulloch or any company owned by Dr. McCulloch;
- Copies of all records reflecting payments from Dr. Dov Berkowitz or any company owned by Dr. Berkowitz;
- Copies of all records reflecting rent payments from any other person or company;
- Copies of all records reflecting ownership or leasing of the equipment used to conduct computerized range of motion and muscle testing;
- Copies of federal tax returns;
- Copies of all payments to individuals or companies who have provided transportation services and all emails to or from those individuals or companies;
- Copies of credit card statements for credit cards used by NYC Medical or by Dr. Jacobi for business purposes since October 1, 2019;
- Copies of all records reflecting the schedule or schedules of licensed healthcare professionals who have provided services on behalf of NYC Medical;
- Copies of all emails and text messages to and from Denise Diaz, Mihaela Dajdea, Lyudmila Porteskaya, Dennis Poretsky, Anjani Sinha, Mark Lodespoto, Stella Raytsin, Kenneth McCulloch, Dov Berkowitz, Richard Apple, and Leonid Reyfman; - Copies of all records reflecting payments to Mihaela Dajdea, Lyudmila Porteskaya, Dennis Poretsky, Anjani Sinha, Mark Lodespoto, Stella Raytsin, and Allen Rothpearl, and concerning any of the patients identified in Appendix "A" or regarding work scheduling,

the scope of practice, medical supervision, direction of medical care, billing practices and procedures, scope of employment or independent contractor relationship, or compensation;

- Copies of all records in which a patient was discharged and/or determined to have reached maximum medical improvement and/or determined that the patient no longer needs treatment within 60 days of his or her initial visit;

- Copies of the general ledger(s) of NYC Medical and/or all booking records of NYC Medical; - Copies of all bank records of NYC Medical, including but not limited to cancelled checks and statements; - Copies of all records reflecting supervision of physician assistants;

and - Copies of the complete employee files for:

- o Stella Raytsin
- o Denise Diaz
- o Edmund Miro
- o Mihaela Dajdea
- o Mark Lodespoto
- o Lyudmila Porteskaya
- o Dennis Poretsky
- o Crystal Ventour
- o Allen Rothpearl
- o Anjani Sinha
- o Marcel Lace
- o Eugene Schketer
- o Julie Urprasad

On November 6, 2020, the Applicant's attorney responded to the Respondent's request for additional verification by responding/providing the Respondent with all of the items of requested additional verification with the exception of five items, which the Applicant's attorney specifically objected to. Specifically, and of most significance the Applicant's attorney objected to the Respondent's request for the employee files for various employees including Edmund Miro, who is the physical therapist who treated the patient between February 4, 2020, and February 16, 2020. Due to the Applicant not providing the Respondent with all of the requested additional verification on March 5, 2021 the Respondent denied the Applicant's claim based on Applicant's failure to provide all outstanding verification within 120 days. Applicant contends that it substantially complied with Respondent's verification requests and the denial cannot be sustained.

It is also of note that Respondent filed a Declaratory Judgment Action in Queens County, under *Index 719831/2021, State Farm v. NYC Medical Treatments*. According to the Complaint NYC Medical is owned by Michael Jacobi, D.O. Michael Jacobi, DO also purportedly owns Epione Medical PC. and that NYC Medical replaced Epione Medical. At paragraph 9 healthcare service providers are not eligible for NO Fault Benefits if they engage in self-referrals, kickbacks, or other illegal payments in violation

of New York's Public Health Law. Starting at paragraph 16 of the Complaint, State Farm addresses the reasons for verification.

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In reviewing e-courts, the matter was marked fully submitted by Justice Ulysses. B. Leverett on 6/1/2022. This action addresses the same arguments of the parties in all four of these cases.

Having reviewed the evidence including the Arbitration awards, I find the decision of Arbitrator Maria Schuchmann, in the case of *17-21-1227-9668 NYC Medical Treatments/ K.C. v. State Farm*, as well all as decisions by Arbitrator Giralamo in in *17-21-1227-3148, NYC Medical Treatments P.C. v. States Farm Mutual Auto Insurance Company*, *AAA 17-21-1209-4023 NYC Medical Treatments PC/ A.A. C-S v. State Farm*, *the bills were timely denied based upon the 120 day rule. For the second case of AAA 17-21-1209-4024 NYC Medical Treatments PC/ A.A. C-S v. State Farm*, *the bills were not denied. The third case was AAA 17-21-1209-4026 NYC Medical Treatments PC/ A.A. C-S v. State Farm where 4 out of 5 bills were denied based upon the 120 Day Rule*, and Arbitrator Arbitrator Nancy Kramer Avalone in *AAA Case # 17-22-1237-6543 NYC Medical Treatments P.C. v. States Farm Mutual Auto Insurance Company* all addressed identical issues were presented, in that the bills were denied on the 120 Day Rule.

Based upon the existence and the fully submitted motion in the Supreme Court case, as with the cases cited above, I find that due to the pending action, and the seriousness of the allegations, any decisions on this claim should await a decision on that action.

Accordingly, Applicant's claim 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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Kings

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

02/22/2023

(Dated)

Evelina Miller

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:
425b55c259225b2e642bd626bf767fa3

Electronically Signed

Your name: Evelina Miller
Signed on: 02/22/2023