

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Interventional Physical Medicine & Rehab of NY PLLC (Applicant)	AAA Case No.	17-21-1230-0704
	Applicant's File No.	DK21-181053
	Insurer's Claim File No.	046587308
- and -	NAIC No.	36447

Liberty Mutual Insurance Company  
(Respondent)

**ARBITRATION AWARD**

I, Meryem Toksoy, 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 (GRJ)

1. Hearing(s) held on 03/07/2023  
Declared closed by the arbitrator on 03/07/2023

Jennifer Raheb, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Elvira Messina, Esq. from Callinan & Smith LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$130.28**, 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

In dispute is a claim by the Applicant, Interventional Physical Medicine & Rehab of NY, PLLC, as the assignee of a 21-year-old male who was injured as a driver in a motor vehicle accident on 08-16-21.

Applicant seeks to be paid for the **Professional Component (PC)** of services that were performed on 08-23-21. Its claim of **\$130.28** refers to **Autonomic Nervous System (ANS) testing** (ie, sudomotor function [CPT 95923]).

**I must decide whether the claim was overdue on 12-08-21, which is when the Applicant commenced this action.**

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives.

There were no witnesses.

## OVERVIEW

DATE	EVENT
08-23-21	Date of service
09-22-21	Applicant is asked to appear for an EUO that is scheduled for 10-28-21.
10-29-21	Due to the Applicant's failure to appear on the preceding day, a second request is made. Per the letter, Applicant is asked to appear for an EUO that is scheduled for 11-29-21.
11-29-21	The EUO goes forward, with Manish Mammen, MD (the owner) offering his testimony.
12-08-21	Respondent issues its first post-EUO verification request. The letter calls for the Applicant to provide various documents.  On this date, the claim is filed in arbitration.
01-13-22	Respondent issues its second request. Again, the Applicant is asked to produce various documents.

## LEGAL FRAMEWORK

An Applicant establishes a prima facie showing of entitlement to No-Fault benefits under Article 51 of the Insurance Law by "submitting evidence that payment of no-fault benefits are overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 14 N.Y.S. 3d 283 (Court of Appeals, 2015).

Once Applicant establishes its prima facie case, the burden of proof shifts to Respondent to come forward with admissible evidence demonstrating the existence of a material issue of fact. Amaze Medical Supply Inc. v. Eagle Ins. Co., 2 Misc.3d 128(A), 2003 N.Y. Slip Op. 51701(U)(App Term, 2<sup>nd</sup> Dept, 2<sup>nd</sup> & 11<sup>th</sup> Jud Dists., 2003).

Subsequent to receipt of the completed claim forms, an insurer has the right to request additional verification. As required by 11 NYCRR §65-3.5(b), the initial request for verification is to be made within 15 business days of receipt of the claim. Additionally, after 30 calendar days from the original request, the insurer has a regulatory duty to issue a second verification request within the following 10 calendar days. 11 NYCRR §65-3.6(b).

It should be noted, however, that an applicant's obligation to comply with such request(s) shall not be negated based on the insurer's failure to act within the prescribed timeframe(s). 11 NYCRR §65-3.5(p).

For example, a request that is sent beyond the 15 business days is still valid so long as it is issued within 30 days from receipt of the claim; such a deviation will simply reduce the insurer's time to pay or deny by the same number of days. 11 NYCRR §65-3.8(l). See Nyack Hosp. v. General Motors Acceptance Corp., 8 NY3d 294, 2007 NY Slip Op 02439 (Court of Appeals, 2007).

On the other hand, if the initial request for verification is made beyond 30 days from receipt of the claim, the request will be deemed a nullity and the time to pay or deny will have expired. Compas Med., P.C. v. Farm Family Cas. Ins. Co., 2015 NY Slip Op 51631(U) (App. Term 2nd, 11th and 13<sup>th</sup> Jud. Dists. 2015).

The obligation to pay or deny a claim is not triggered until the insurer has received all of the relevant information that was requested. Hospital for Joint Diseases v. State Farm Mut. Auto. Ins. Co., 8 AD3d 533, 2004 NY Slip Op 05413 (App. Div., 2<sup>nd</sup> Dept., 2004). If the applicant avers that the requested item(s) were provided, this must be supported with competent proof. New Horizon Surgical Center, LLC v. Travelers Ins., 62 Misc.3d 150(A), 2019 NY Slip Op 50281(U)(App. Term 2nd, 11th and 13<sup>th</sup> Jud. Dists., Mar. 8, 2019). The mere allegation of compliance does not serve to create an issue of fact. *Id.* Moreover, a partial response does not suffice. New Horizon Surgical Ctr., LLC v. Travelers Ins. Co., 65 Misc.3d 139(A), 2019 NY Slip Op 51690(U)(App. Term 2nd, 11th and 13<sup>th</sup> Jud. Dists., Oct. 18, 2019).

It should also be noted that **if a response to an insurer's request yields new information (for example, by testimony offered during an EUO), the insurer may continue to pend the claim with subsequent verification requests.** See Quality Health Products, Inc. v. Auto One Ins. Co., 20 Misc.3d 136(A), 867

N.Y.S.2d 377 (Table), 2008 N.Y. Slip Op. 51530(U) (App. Term 2nd and 11th Jud. Dists., July 10, 2008). See also Sure Way NY, Inc. v. Travelers Ins. Co., 56 Misc.3d 289 (Civ. Ct. Kings Co., 2016). **In this scenario, the timeframe within which the insurer is obligated to act is governed by 11 NYCRR §§65-3.5(b) and 65-3.6(b).**

In terms of the reasonableness of the request(s), "[i]f the provider objects to the request for verification, then the issue of whether the requested verification material and the objection were proper are preserved and become questions of fact for the trier of fact. If the insurer can establish it had a reasonable, good faith, factual basis for requesting the verification, then the failure of the claimant-provider to furnish the material will result in the dismissal of the action. If the insurer cannot establish a reasonable, good faith, factual basis for requesting the verification, then the insurer will be required to pay the claim." Victory Medical Diagnostics, PC v. Nationwide Property and Casualty Ins. Co., 36 Misc.3d 568, 576, 949 N.Y.S.2d 855, 862 (Dist. Ct., Nassau Co., 2012).

## **DECISION**

### **I find in favor of the Respondent.**

Pursuant to Insurance Law section 5106 (a) and 11 NYCRR 65-3.8 (a)(1), No-Fault benefits are overdue if not paid or denied within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested.

Here, the evidence shows that Respondent was still in the process of verifying the claim when Applicant commenced arbitration. This was premature; **at the time of filing, the bill was not overdue.**

Considering this fact, and pursuant to legal authority, the claim is hereby 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 Nassau

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

04/08/2023

(Dated)

Meryem Toksoy

### **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:**  
59d73a788d2e58708ac98bfad71a18ac

### Electronically Signed

Your name: Meryem Toksoy  
Signed on: 04/08/2023