

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nexray Medical Imaging PC d/b/a Soul  
Radiology  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-21-1203-5208
Applicant's File No.	RFA19-259655
Insurer's Claim File No.	0624099060101019
NAIC No.	22055

### **ARBITRATION AWARD**

I, Ioannis Gloumis, 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: EIP.

1. Hearing(s) held on 03/21/2023  
Declared closed by the arbitrator on 03/21/2023

Sheetal Paul, Esq. from Russell Friedman & Associates LLP participated virtually for the Applicant

Michael Bluman, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,791.73**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount of \$1,791.73 was amended by Applicant during the arbitration hearing to \$1,571.80.

Stipulations WERE made by the parties regarding the issues to be determined.

Applicant stipulated to the timeliness of Respondent's denial of the claims in dispute.

### 3. Summary of Issues in Dispute

Applicant seeks no-fault reimbursement for MRIs of the cervical spine and lumbar spine that were performed on April 16, 2019, following an October 17, 2018 motor vehicle accident. The issue to be determined is whether Respondent's denial of the claims in dispute based upon the defense that the EIP failed to appear for independent medical examinations ("IMEs") on January 31, 2019 and February 25, 2019 should be upheld.

### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments that were presented by the parties during the arbitration hearing and the documentary evidence submitted by the parties. There were no witnesses that testified during the arbitration hearing.

#### *SUMMARY OF FACTS*

The EIP, then a 35-year-old male driver, was injured in a motor vehicle accident on October 17, 2018. Following the accident, the EIP sought private medical attention for multiple injuries. The EIP came under the care of Tristate Multi-Specialty Services, P.C. and underwent a conservative rehabilitation treatment program. Based upon a referral from Frida Isakov, M.D., Applicant performed MRI of the cervical spine and lumbar spine on April 16, 2019.

Applicant billed Respondent \$1,791.73 for the MRIs of the cervical spine and lumbar spine that were performed on April 16, 2019. Respondent received Applicant's bills for the claims in dispute on May 6, 2019.

## *LEGAL STANDARDS FOR PRIMA FACIE CASE*

To establish a prima facie case, a claimant is required to submit proof that it timely sent its claim for no-fault benefits to the insurer, that the insurer received the claim, and that the insurer failed to pay or deny the claim within 30 days. See *Amaze Med. Supply Inc. v. Allstate Ins. Co.*, 3 Misc.3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc.3d 767 (Civ Ct, NY County 2004).

An insurer's denial of claim form indicating the date on which it was received adequately establishes that the claimant sent, and that the insurer received the claim. *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

## *APPLICATION OF LEGAL STANDARDS TO THE CLAIMS*

Respondent's denials provide that Respondent received the bills for the claims in dispute on May 6, 2019. Therefore, Applicant has established its prima facie case. Applicant stipulated that Respondent timely denied the claims on May 15, 2019 based upon the defense that the EIP failed to appear for IMEs on January 31, 2019 and February 25, 2019.

## *DEFENSE - FAILURE BY THE EIP TO APPEAR FOR SCHEDULED IMES*

Respondent's claim specific denials provide that the claims in dispute have been denied based upon the defense that the EIP failed to appear for IMEs on January 31, 2019 and February 25, 2019. Respondent has presented the affirmation of David Essig, M.D. ( *regarding the scheduled orthopedic IME of February 25, 2019*), the affirmation of Dana Mannor, M.D. dated June 26, 2019 ( *regarding the scheduled orthopedic IME of January 31, 2019*), the affidavit of Brian Wolin, D.C. dated June 24, 2019 ( *regarding the scheduled chiropractic IME of February 25, 2019*), the affidavit of Catherine Tortorella, D.C., L.Ac. dated January 31, 2019 ( *regarding the scheduled chiropractic IME of January 31, 2019*), the affidavit of Jeffrey Nudelman, L.Ac. dated June 24, 2019 ( *regarding the scheduled acupuncture IME of February 25, 2019*), and the affidavit of Iren Shemelyak, L.Ac. dated January 31, 2019 ( *regarding the scheduled acupuncture IME of January 31, 2019*).

Respondent also presented the affidavit from David Cosio, Vice President of MedSource National to establish the mailing of the scheduling letters, the scheduling of the IMEs, and the failure by the EIP to appear for the IMEs on January 31, 2019 and February 25, 2019.

#### *LEGAL STANDARDS FOR ADDITIONAL VERIFICATION AND IMES*

"The Insurance Law and regulations promulgated thereunder provide that "within 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part." *11 NYCRR 65-3.8(c)*; *see Insurance Law § 5106(a)*. This 30-day period may be extended by, inter alia, a timely demand by the insurance company for further verification of a claim. *See 11 NYCRR 65-3.5(b)*; *65-3.6(b)*. Such a demand must be made within 15 business days of receipt of a completed application. *See 11 NYCRR 65-3.5(b)*. If the demanded verification is not received within 30 days, the insurance company must issue a follow-up request within 10 days of the insured's failure to respond. *See 11 NYCRR 65-3.6(b)*.

A claim need not be paid or denied until all demanded verification is provided. *See 11 NYCRR 65-3.8(b)(3)*; *Westchester County Med. Ctr. v. New York Cent. Mut. Fire Ins. Co.*, 262 A.D.2d 553, 554). When a hospital fails to respond to a verification request, the 30-day period in which to pay or deny the claim does not begin to run, and any claim for payment by the hospital is premature. *See St. Vincent's Hosp. of Richmond v. American Tr. Ins. Co.*, 299 A.D.2d 338, 340; *Nyack Hosp. v. Progressive Cas. Ins. Co.*, 296 A.D.2d 482; *New York Hosp. Med. Ctr. Of Queens v. State Farm Mut. Auto Ins. Co.*, 293 A.D.2d 588, 590. No-fault benefits are overdue, however, if not paid within 30 calendar days after the insurer receives verification of all of the relevant information requested pursuant to *11 NYCRR 65.15(d)*; *See 11 NYCRR 65-3.8(a)(1)*; *New York Hosp. Med. Ctr. Of Queens v. Country-Wide Ins. Co.*, 295 A.D.2d 583, 584.

Moreover, the prescribed No-Fault endorsement in *New York, N.Y. Comp. Codes R. & Regs. Tit. 11, Section 65-1 (Regulation 68) (2002)* entitled "Conditions" states:

*"The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require." (Emphasis added). The insurer is given the right, as a policy condition, to conduct medical examinations when, and as often as, the Company may reasonably require, so that the insurer has the opportunity to physically examine the patient in order to evaluate the medical necessity of the treatment performed."*

Furthermore, the *New York State Insurance Department's Office of General Counsel* issued an opinion on February 11, 2003 representing the position of the *New York State Insurance Department* with respect to the effect of an Eligible Injured Person's failure to attend a No-Fault IME. The opinion states, in relevant part, as follows:

*1) (a) When an eligible injured person fails to comply with a No-Fault insurer's reasonable request for a medical examination, that person has failed to meet a condition precedent for No-Fault coverage under the prescribed No-Fault endorsement contained in 11 NYCRR 65-1, and therefore, any pending claim submitted for services rendered may be denied by the insurer due to the policy breach and resulting lack of coverage. However, the insurer should pay all claims for services where it does not dispute the medical necessity of such services.*

*(b) When an eligible injured person fails to meet the condition precedent for coverage due to that person's failure to comply with a reasonable request for a medical examination, the breach of that policy condition obviates the obligation of the No-Fault insurer to provide coverage for any future claims for health services arising from the same accident provided to that person by any health provider....*

*2) When a No-Fault insurer issues a denial of claim based upon the failure of an eligible injured person to submit to a requested medical examination in order to verify the medical necessity of health services performed, the insurer is relieved of an obligation to issue a denial of claim based upon the lack of medical necessity for services rendered.*

Thus, an insurer is entitled to judgment where it proves that two separate requests for an IME were duly mailed to the EIP, and the latter failed to appear on either of the dates. *Apollo Chiropractic Care, P.C. v. Praetorian Ins. Co.*, 27 Misc.3d 139(A) (App. Term 1st Dept. May 24, 2010).

## *DECISION*

The affidavits from Irene Shemelyak, L.Ac. and Catherine Tortorella, D.C., L.Ac. for the scheduled chiropractic and acupuncture IMEs of January 31, 2019 establish that the EIP failed to appear for the chiropractic and acupuncture IMEs on January 31, 2019. The affidavits were executed on January 31, 2019, the same date as the scheduled IMEs.

However, the affirmation of Dr. Essig for the February 25, 2019 orthopedic IME is not dated, and it is unclear when the affirmation was executed. The affirmation from Dr. Mannor for the orthopedic IME of January 31, 2019 is dated June 26, 2019. The affidavits of Mr. Nudelman for the acupuncture IME of February 25, 2019 and Dr. Wolin for the chiropractic IME of February 25, 2019 were executed on June 24, 2019. The affirmations and affidavits do not provide the basis of the physicians'/specialists' recollection that the EIP failed to appear for the scheduled IMEs. The affirmations and affidavits do not state that the statements that were made by the physicians'/specialists' based upon personal knowledge or a review of the physicians'/specialists' business files that are kept and maintained in the ordinary course of business. These affirmations and affidavits are insufficient as they were not executed until approximately four to five months after the scheduled IME dates, and the affirmation of Dr. Essig is not dated at all. Said affidavits and affirmations do not include statements that they were made by the physicians'/specialists' based upon personal knowledge, a review of the EIP's file kept in the ordinary course of their businesses, and do not provide any other bases for their recollections as to how the physicians'/specialists' determined that the EIP failed to appear for the scheduled IMEs. I am not persuaded that the affidavit of Mr. Cosio is sufficient to establish the failure of the EIP to appear for the scheduled IMEs. Therefore, Respondent's denial of the claims in dispute should not be upheld.

Accordingly, Applicant's claims are hereby granted in their 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Nexray Medical Imaging PC d/b/a Soul Radiology	04/16/19 - 04/16/19	\$879.73	\$659.80	Awarded: \$659.80
	Nexray Medical Imaging PC d/b/a Soul Radiology	04/16/19 - 04/16/19	\$912.00	\$912.00	Awarded: \$912.00
<b>Total</b>			<b>\$1,791.73</b>		<b>Awarded: \$1,571.80</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 05/11/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay Applicant the amount of interest computed from the date of filing, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of *11 NYCRR 65-3.9(c)* (stay of interest).

C. Attorney's Fees

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

Respondent shall also pay Applicant an attorney's fee in accordance with *11 NYCRR 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 NY  
SS :  
County of Nassau

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

04/19/2023  
(Dated)

Ioannis Gloumis

#### **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:**  
dc40b15b262fc5fe1951314461b02596

**Electronically Signed**

Your name: Ioannis Gloumis  
Signed on: 04/19/2023