

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sedation Vacation Perioperative Medicine  
PLLC  
(Applicant)

- and -

Travelers Personal Insurance Company  
(Respondent)

AAA Case No.	17-22-1261-5471
Applicant's File No.	NF 3725838
Insurer's Claim File No.	272 PPIIK4289K 002
NAIC No.	38130

**ARBITRATION AWARD**

I, Greta Vilar, 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: Patient

1. Hearing(s) held on 06/06/2023  
Declared closed by the arbitrator on 06/06/2023

Cliff Ryan, Esq. from The Law Office of Thomas Tona, PC participated virtually for the Applicant

Samuel Lesman, Esq. from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$594.20**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulate and agree that the only issue to be determined is whether the services at issue were medically necessary.

3. Summary of Issues in Dispute

The patient in this case is a 50-year-old female who was a pedestrian struck by a motor vehicle on July 3, 2021. At issue is anesthesia administered from September 1, 2021

through May 26, 2022. The respondent denied a portion of the applicant's claims based upon an IME by Dr. Dean dated April 26, 2022. The respondent argues that it requested verification on another portion of the applicant's claims which remain outstanding.

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

The record in this case consisted of claimant's submission and respondent's submission, as well as documents not enumerated within this decision but which are contained in the electronic case file maintained by the American Arbitration Association.

11 NYCRR 65-4.5 (o) (1) (Regulation 68-D), reads as follows: The arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

Based on a review of the documentary evidence submitted to the ECF, this claim is decided as follows:

The respondent acknowledged receipt of the applicant's claim for date of service May 26, 2022 and issued a timely denial based upon lack of medical necessity. In support of its position, the respondent has submitted an IME by Dr. Dean dated April 26, 2022. The applicant points out that I have previously considered the same IME by Dr. Dean under AAA case number 17-22-1267-5744. In that case I found that Dr. Dean's IME was sufficient for the respondent to meet its burden of proof. In response, the applicant submitted medical records that it argued were sufficient to refute Dr. Dean's opinion. This included evidence that the patient continued to be symptomatic around the time of the IME and ultimately required additional injections after the IME. I found that this was sufficient for the applicant to meet its burden of proof and the applicant was afforded accordingly.

I have thoroughly reviewed the records before me in the instant case and see no new evidence sufficient to persuade me to reach a conclusion contrary to my prior holding on this issue. The applicant's claim for date of service May 26, 2022 is therefore awarded.

The applicant's bill for date of service January 19, 2022 was acknowledged by the respondent who requested additional verification. The respondent's submission includes letters to the applicant dated February 9, 2022 and's March 16, 2022. The letters sought a variety of corporate documentation as well as an examination under oath of the applicant. The applicant argues that it provided a response dated April 8, 2022 wherein it forwarded requested medical notes. There is no subsequent response to the applicant's letter from the respondent.

Once the insurer proves that it timely mailed its request and follow-up request for verification to the health care provider, if the latter does not demonstrate that it provided

the insurer with the requested verification prior to the commencement of litigation, the litigation is premature inasmuch as the 30-day period within which the insurer was required to pay or deny the claim did not commence to run. *Proscan Imaging, P.C. v. Travelers Indemnity Co.*, 28 Misc.3d 127(A), 2010 N.Y. Slip Op. 51176(U), 2010 WL 2681691 (App. Term 2d, 11th & 13th Dists. July 7, 2010).

A claimant "cannot simply rest on its laurels and ignore a verification request. . . . Since the plaintiff desires to be paid, the onus is on it to ensure that the defendant has all of the required information to verify and pay the claim. Plaintiff completely ignored its burden and commenced this action prematurely." *D & R Medical Supply, Inc. v. Clarendon Nat. Ins. Co.*, 22 Misc.3d 1127(A), 881 N.Y.S.2d 362, 2009 N.Y. Slip Op. 50306(U), 2009 WL 485262 (Civ. Ct. Kings Co., Genine D. Edwards, J., Feb. 26, 2009). There is no provision in the No-Fault regulations which permit a claimant or an insurance company to ignore communications from each other without risking its chance to prevail in the matter. *Back to Back Chiropractor, P.C. v. State Farm Mutual Automobile Ins. Co.*, 35 Misc.3d 1241(A), 954 N.Y.S.2d 757, 2012 N.Y. Slip Op. 51088(U) at 5, 2012 WL 2161476 (Dist. Ct. Suffolk Co., C. Stephen Hackeling, J., June 15, 2012).

I find in favor of the applicant as to date of service January 19, 2022. The applicant provided a partial response which is date stamped received by the respondent on April 20, 2022. However, the respondent did not submit any further communications to the applicant. I find that the respondent was required to respond to the applicant's partial response and to set forth what items may still have been outstanding at that point. The respondent failed to do so. The applicant is awarded accordingly.

Finally, the applicant's claim for date of service September 1 was acknowledged by the respondent who issued verification requests dated October 26, 2021 and November 29, 2021. The requests sought essentially the same information as had been sought in the above-mentioned requests. However, the applicant does not argue that it provided any partial response for this date of service.

I find in favor of the respondent as to date of service September 1, 2021. The respondent has established that it requested additional verification from the applicant which was not responded to in any way. I note that the applicant made a Domotor argument based upon the fact that the respondent globally denied the claim based upon Dr. Dean's IME. However, the verification requests predate Dr. Dean's IME and the respondent's subsequent global denial by almost 6 months. The applicant's remaining claim is therefore dismissed.

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
	Sedation Vacation Perioperative Medicine PLLC	09/01/21 - 05/26/22	\$594.20	Awarded: \$386.23
Total			\$594.20	Awarded: \$386.23

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/09/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d).

- 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 Suffolk

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

06/12/2023  
(Dated)

Greta Vilar

**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:**  
fd0a9fed2a2445e72a50f1c4f05b8e64

### Electronically Signed

Your name: Greta Vilar  
Signed on: 06/12/2023