American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dynamic Medical Imaging PC (Applicant)	AAA Case No.	17-22-1263-9350
	Applicant's File No.	RFA22-309647
- and -	Insurer's Claim File No.	0590688727
	NAIC No.	19232
Allstate Insurance Company (Respondent)		

ARBITRATION AWARD

I, Frank Marotta, 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-JG

1. Hearing(s) held on 11/21/2023
   Declared closed by the arbitrator on 11/21/2023

   Sheetal Paul, Esq. from The Russell Friedman Law Group LLP participated virtually for the Applicant

   Marissa Allis, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,838.28**, 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

   The record reveals that the Assignor-JG, a 61-year-old-male, sustained injuries in a motor vehicle accident on 6/24/20.

   The Applicant seeks reimbursement for an MRI of the thoracic spine ($959.61) on 8/26/20 and the right shoulder ($878.67) on 9/24/20.

   The Respondent asserts that the Applicant filed for arbitration prematurely.

   The issue is whether the Applicant's claim should be dismissed without prejudice.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of $1,838.28 for disputed fees in connection with an MRI of the thoracic spine on 8/26/20 and the right shoulder on 9/24/20.

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing. In accordance with 11 NYCRR 65-4.5(o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations. The parties appeared and the hearing was conducted virtually via zoom.

Applicant's prima facie case is not in dispute. The Respondent's verification request letter acknowledges that the bill for the thoracic spine MRI was received on 9/14/20 and the bill for the right shoulder MRI on 10/7/20. Spine America Medical, P.C. v. State Farm Mutual Automobile Insurance Company, 13 Misc.3d 135(A), N.Y. Slip Op. 52035(U) (App. Term 9th and 10th - October 5, 2006).

An insurer is required to pay, in whole or in part, a claim for no-fault benefits within 30 days. Insurance Law §5106(a); 11NYCRR 65- 3.8 (c). This 30-day period may be extended by making a request for additional verification of the claim within, "*15 business days of receipt of the prescribed verification forms*" 11 NYCRR §65-3.5(b). If the verification has not been supplied to the insurer 30 days after the original request the insurer shall, "*at a minimum… within 10 calendar days, follow with the party from whom the verification was requested, either by telephone call properly documented in the file or by mail.*" See 11 NYCRR §65-3.6(b).

An insurer is entitled to receive all items necessary to verify a claim directly from the parties from whom such information was requested. 11 NYCRR §65-3.5(c) and is not obligated to pay or deny a claim until it has received verification of all relevant information requested. See Central Suffolk Hospital v. NY Central Mut Fire Ins. Co., 24 A.D.3d 492, 807 N.Y.S.2d 382 (2d Dept 2005); New York & Presbyterian Hospital v Progressive Cas. Ins. Co., 2004 NY Slip Op 01750, 5 AD3d 568 (App Div 2d Dept. 2004). The 30-day period to pay or deny a claim does not begin until all outstanding verification is received; therefore, any claim for payment made prior receipt of all outstanding verification is premature. 11 NYCRR §65-3.8 (a); Central Suffolk Hospital v. NY Central Mut Fire Ins. Co., supra.

With respect to the bill for the thoracic spine MRI received on 9/14/20 the Respondent provides identical verification request letters dated 10/5/20 and 11/11/20. With respect to the bill for the right shoulder MRI received on 10/7/20 the Respondent provides identical verification request letters dated 10/26/20 and 12/11/20. In fact, it is noted that all four of the verification letters provided in this matter list the same 14 items which include documents as well as the examination under oath of the Assignor and the professional corporation that submitted the claim.

As indicated above the Respondent asserts that the matter should be dismissed without prejudice to due to outstanding verification.

Although the Respondent provides copies of their verification request letters, they provided no proof that they were mailed. As such, I find that they are insufficient to toll the Respondent time to pay or deny the claims in issue. Where a no-fault insurer is relying on the defense an action is premature because additional verification is outstanding, it is the insurer's prima facie burden at trial to demonstrate that verification requests were timely mailed and that they did not receive the requested verification. Island Life Chiropractic, P.C. v Travelers Ins. Co., 2019 NY Slip Op 51273(U) (App. Term 2d, 11th and 13th Jud. Dist. 2019). See also Right Aid Medical Supply Corp. v. State Farm Mut. Auto. Ins. Co., 2019 Slip Op 51409(U) (App. Term 2d, 11th and13th Jud. Dist. 2019). Without any proof supporting the mailing of the verification letters noted above, I find that the Respondent failed to provide prima facie proof that the claims should be dismissed as prematurely filed.

The above notwithstanding, the Respondent did seek an examination under oath (EUO) of the Applicant which was eventually held on 4/27/21 resulting in communications between the parties regarding post-EUO verification requests. While an insurer may seek an EUO as a form of verification the issuance of the scheduling letters must comply with the time frame established for verification in the Regulation. It is well settled that EUO scheduling letter must be sent within 30 days of the insurer's receipt of a claim. Fontanella v Allstate Ins. Co., 53 Misc. 3d 150(A), 2016 NY Slip Op. 51679 (U) (App. Term 2d & 11th & 13th Dists. Nov. 17, 2016). An EUO scheduling letter not mailed within 30 days of receipt of the bill is a nullity by its untimeliness. A.C. Medical P.C. v Ameriprise Ins. Co., 54 Misc. 3d 127(A), 2016 NY Slip Op. 51787 (U) (App. Term 2d & 11th & 13th Dists. Dec. 2, 2016). See also Neptune Medical Care, P.C. v. Ameriprise Auto & Home Insurance, 48 Misc. 3d 139 (A), 2015 NY Slip Op 51220(U) (App. Term 2d, 11th & 13th Dists. 2015); O & M Medical, P.C. v. Travelers Indemnity Ins. Co., 47 Misc.3d 134(A), 2015 NY Slip Op 50476(U) (App Term 2d, 11th & 13th Jud Dists. 2015).

The record reveals that the initial EUO scheduling notice involving the claim on behalf of this Assignor was mailed by Smith & Brink to the Applicant on 11/4/20. Their letter and Affidavit mailing is in Respondent's record. I find the 11/4/20 EUO request sufficient to toll the Respondent time to pay or deny the MRI of the right shoulder MRI received on 10/7/20. It is insufficient to support the tolling of the time to pay or deny the thoracic spine MRI received on 9/14/20 as it was issued more than 30 days after the bill was received.

As such, I find that the Applicant is entitled to be reimbursed for the thoracic spine MRI in the amount of $959.61 with interest running from the thirty first day after the claim was presented to the carrier for payment, New York Presbyterian Hospital v. Allstate Insurance Company, 30 A.D.3d 492, 819 N.Y.S.2d 268, 2006 N.Y. Slip Op. 04815 (2nd Dept 2006). Hempstead General Hospital v. Insurance Company of North America, 208 A.D.2d 501, 617 N.Y.S.2d 478 (2nd Dept 1994) which in this case is 10/15/20.

As indicated the record reveals that an EUO of the Applicant was held on 4/27/21. Dr. Paresh Rijsinghani appeared on behalf of the Applicant. Following the EUO of Dr. Paresh Rijsinghani, the Respondent, through their Attorney, Smith & Brink, a post-EUO verification request was made.

The initial post-EUO verification letter is dated 5/3/21. The Applicant provided proof that the deliveries of a response with documents was made to Allstate on 6/11/21 (Tacking number 9505514826361160783956) and Smith & Brink on 6/16/21 (Tacking number 9505516134171166370780). The response prompted a letter from Smith & Bank dated 6/22/21 advising that the response was incomplete. In a letter dated 8/26/21, Smith & Brink again wrote to the Applicant in response to a post marked response dated 8/19/21. Comparing the letters from Smith & Brink dated 6/22/21 and 8/26/21, it appears that additional documents were provided while others remain outstanding. In a letter dated 9/20/21 Smith & Brink wrote to the Applicant noting a response post-marked the 9/16/21. Again, comparing the letters not unreasonable to find that additional documents were provided leaving outstanding W-2 and/or 1099s issued to radiologists, invoices and/or agreements with transportation companies and contracts and/or agreements between Thomas Dodson and the Applicant. Having reviewed the Applicant's submission including the documents sent in June 2021 as well as an unsigned letter from the Applicant dated 1/30/23 and an Affidavit by Maryann Scudieri dated 3/17/23 I find that the items noted in Respondent's 9/20/21 letter remain outstanding. It was asserts by the Applicant that Ms. Scudieri's Affidavit and the unsigned letter of 1/30/23 support each other and the fact that all items requested have been supplied, but reviewing the document based on the tracking numbers listed, I find the items noted in the 9/20/21 letter remain outstanding. Without any evidence that an object to the request for these documents was raised. I find that the claim for the MRI of the right shoulder should be dismissed without prejudice.

For the reasons noted above the Applicant is awarded its claim in the amount of $959.61.

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**
	Dynamic Medical Imaging PC	**08/26/20 - 08/26/20**	**$959.61**	**Awarded: $959.61**
	Dynamic Medical Imaging PC	**09/24/20 - 09/24/20**	**$878.67**	**Dismissed without prejudice**
Total			**$1,838.28**	**Awarded: $959.61**

B. The insurer shall also compute and pay the applicant interest set forth below. 10/15/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is governed by 11 NYCRR §65-3.9. Where a motor vehicle accident occurs after April 5, 2002, 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 (c) indicates that "*If an applicant does not request arbitration … with 30-days after the receipt of a denial of claim or payment of benefits … interest shall not accumulate … until such action is taken.*" The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009). Where no denial has been issued and no payment has been made, it is clear from the statute that the claim is overdue, and interest runs from the thirty first day after the claim was presented to the carrier for payment. New York Presbyterian Hospital v. Allstate Insurance Company, 30 A.D.3d 492, 819 N.Y.S.2d 268, 2006 N.Y. Slip Op. 04815 (2nd

Dept 2006). Hempstead General Hospital v. Insurance Company of North America, 208 A.D.2d 501, 617 N.Y.S.2d 478 (2nd Dept 1994).

C. Attorney's Fees

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

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. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of $850." Id. The minimum attorney fee that shall be awarded is $60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6 (i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of $1,360." 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, Frank Marotta, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

11/30/2023
(Dated)

Frank Marotta

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:
d3fcec510ca3fa9b51c26807485e059b

Electronically Signed

Your name: Frank Marotta
Signed on: 11/30/2023