

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Chiropractic Exam Works PC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1293-9055

Applicant's File No. 2968298

Insurer's Claim File No. 0651477101 2EL

NAIC No. 29688

ARBITRATION AWARD

I, Philip Wolf, 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

1. Hearing(s) held on 11/15/2023
Declared closed by the arbitrator on 11/15/2023

Jessica Buscarino, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Francis Arevalo, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,449.76**, 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

Assignor, a 58-year-old female, was involved in a motor vehicle accident on December 6, 2021. As a result of the accident Assignor sustained injuries to his neck and lower back. Applicant is seeking reimbursement for an exam, lumbar ultrasound EMG/NCV testing performed on February 2, 2022 and EMG/NCV testing performed on March 16, 2022. Respondent asserts that Applicant has failed to provide requested verification within 120 calendar days from the date of Respondent's initial verification request.

4. Findings, Conclusions, and Basis Therefor

Applicant is seeking a total of \$2,449.76 for an exam, lumbar ultrasound EMG/NCV testing performed on February 2, 2022 and EMG/NCV testing performed on March 16, 2022. This award is rendered upon the oral arguments of counsel for both parties and upon the documentary evidence submitted by both parties. The documentary evidence submitted by the parties consists of the documents contained within the ADR Center for this matter as of December 9, 2023.

Applicant's Prima Facie Case

Assignor was involved in a motor vehicle accident on December 6, 2021. As a result of the accident, Assignor sustained injuries to his neck and lower back. Applicant presented to Applicant on February 2, 2022 and underwent an exam, lumbar ultrasound, and EMG/NCV testing of the lower extremities. On March 16, 2022, Applicant performed EMG/NCV testing of the upper extremities. Respondent has acknowledged receipt of Applicant's bills.

After reviewing the evidence submitted by Applicant, I find that Applicant has submitted sufficient credible evidence to establish a prima facie case with respect to the exam, lumbar ultrasound EMG/NCV testing performed on February 2, 2022 and EMG/NCV testing performed on March 16, 2022. *See, Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 N.Y.3d. 498, 2015 NY Slip Op 04787, (2015).

Respondent's 120 Day Defense

Respondent issued timely denials asserting that Applicant failed to comply with verification within 120 days of the initial requests or provide written proof providing a reasonable justification for the failure to comply.

Respondent has submitted verification requests dated March 24, 2022, April 29, 2022, May 6, 2022, and June 10, 2022.

Applicant submitted responses to Respondent's verification requests on September 9, 2022 and October 17, 2022. Applicant has submitted valid credible proof of mailing for its verification responses.

There is no evidence that Respondent subsequently acknowledged/responded to Applicant's verification responses.

Determination

Pursuant to 11 NYCRR 65-3.8(b)(3):

"An insurer may issue a denial if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply..."

There is no provision in the No-Fault Regulations which grants a claimant or insurance company the right to ignore a verification request or a response to a verification request. *See, Canarsie Chiropractic, P.C. v. State Farm Mut. Auto Ins. Co.*, 27 Misc.3d 1228(A), 911 N.Y.S.2d 691 (Civ. Ct. Kings County 2010); *Westchester Co. Med. Ctr. v. New York Central Mut. Fire Ins. Co.*, 262 A.D.2d 553, 692 N.Y.S.2d 664 (2nd Dept. 1999); *Media Neurology, P.C. v. Country-Wide Ins. Co.*, 21 Misc.3d 1101A, 873 N.Y.S.2d 235, (Civ. Ct. Kings County 2008); *All Health Medical Care, P.C. v. GEICO*, 2 Misc. 3d 907, 771 N.Y.S.2d 832 (Civ. Ct. Queens County 2004); *Crescent Radiology, PLLC v. American Transit Ins. Co.*, 2011 NY Slip Op 50622U, (2nd Dept. 2011).

In this matter it is clear that Respondent issued timely verification requests and Applicant submitted responses on September 9, 2022 and October 17, 2022. However, there is no evidence establishing that Respondent acknowledge Applicant's responses or issued a subsequent verification request.

Having received responses from Applicant, Respondent was required to either pay the bill, deny the claim, or issue further verification and Respondent failed to do so.

Accordingly, I find that Respondent improperly denied Applicant's claim pursuant to 11 NYCRR 65-3.8(b)(3) and Applicant's claim is granted in its entirety.

DECISION: Based upon the foregoing, Applicant's claim is granted in its entirety. This award is in full disposition of all No-Fault benefit claims submitted to this Arbitrator.

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
	Chiropractic Exam Works PC	02/02/22 - 02/02/22	\$738.21	Awarded: \$738.21
	Chiropractic Exam Works PC	02/02/22 - 02/02/22	\$524.17	Awarded: \$524.18
	Chiropractic Exam Works PC	03/16/22 - 03/16/22	\$663.21	Awarded: \$663.21
	Chiropractic Exam Works PC	03/16/22 - 03/16/22	\$524.17	Awarded: \$524.17
Total			\$2,449.76	Awarded: \$2,449.77

B. The insurer shall also compute and pay the applicant interest set forth below. 04/04/2023 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 the applicant the amount of interest at the rate of 2% per month, simple, and ending with the date of payment of the award. Respondent timely denied the subject bill and arbitration was not commenced within 30 days after receipt of denial. Accordingly, interest shall begin to accrue as of the date adjudication was commenced by the claimant, i.e., the date the claim was received by the AAA (**04/04/2022**). *See, LMK Psychological Services, P.C. v. State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481 (2009).*

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 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, Philip Wolf, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

12/09/2023
(Dated)

Philip Wolf

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:
f5edb3b8a60d632888264bca54a489a0

Electronically Signed

Your name: Philip Wolf
Signed on: 12/09/2023