

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Star Medical Diagnostic, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-23-1305-1718

Applicant's File No. M02962

Insurer's Claim File No. 0112037360101168

NAIC No.

ARBITRATION AWARD

I, Alina Shafranov, 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 11/21/2023
Declared closed by the arbitrator on 11/21/2023

Ashley Andrews-Santillo, Esq. from Munawar Law Firm, PLLC participated virtually for the Applicant

Chris Mango, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$966.54**, 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 Assignor, "EL", a 24-year-old male was involved in a motor vehicle accident as a bicyclist on September 8, 2022. The Assignor sought treatment for his injuries sustained in the MVA, and eventually was referred for MRI testing of the right knee which was performed on 4/5/23, for which the Applicant seeks reimbursement. Respondent timely denied the claim based on Applicant's failure to provide requested verification within 120 days from the date of the original request.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. This hearing was conducted remotely on the Zoom platform. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely

Pursuant to 11 NYCRR 65-3.5(c), "[t]he insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." If the insurer does not receive all of the requested verification, it is prohibited from issuing a denial within the first 120 calendar days following the initial request for additional verification. 11 NYCRR 65-3.8(b)(3). If the requested verification is not received in 120 days, Respondent may, but is not required to, deny the claim.

Respondent's counsel argued that Applicant filed this matter prematurely on June 26, 2023, before the denial was issued on September 21, 2023; therefore, the matter should be dismissed. However, I am not persuaded by the argument of Respondent's counsel, as verification had been exchanged by the case was filed, and furthermore, the Applicant filed for arbitration more than 30 days after its claim was received by the Respondent on April 24, 2023.

Notice is taken that Pervaiz Quereshi, M.D. attended an Examination Under Oath ("EUO") on behalf of Applicant on November 18, 2022. Following the EUO, Respondent issued numerous verification requests which called for production of the following documents:

- "1. Lease agreement to which [The applicant] is a party and proof of each payment [The applicant] made thereunder regarding the location, 234-28A Merrick Blvd, Rosedale NY, 11422, at which [The applicant] purportedly rendered services during the time period of April 2021 through the present;
2. Purchase contract or agreement to which [The applicant] is a party and proof of payment regarding the location, 234 West Merrick Rd. Valley Stream, NY 11580, at which [The applicant] purportedly rendered services during the time period of February 2020 through the present;
3. Documents relating to the income and expenses of [The applicant], such as bank statements from [The applicant]'s corporate Chase bank account including deposit and withdrawal logs from January 1, 2020 through the present, canceled checks (front and back) that evince payments from this account, and corporate tax returns (including quarterly reports);

4. A complete list of all the employees who are employed with [The applicant], and who provide or who have provided services on behalf of [The applicant], documents identifying the relationship between each individual and [The applicant] (i.e., W-2s, 1099s, and/or K-1s);
5. Licensing and certification documentation for all radiologists and radiology technicians employed by [The applicant];
6. Documentation identifying the make and model of the MRI machines used by [The applicant] employees to perform MRIs, and any contracts, invoices, and purchase agreements evincing acquisition of these items by [The applicant];
7. Copy or copies of the service agreement with Newmar Medical, the company responsible for servicing and maintaining the MRI machines used by [The applicant];
8. Documentation that establishes the accreditation of [The applicant] with the Intersocietal Accreditation Commission; and
9. Any written partnership contract with co-owner Robert Solomon, M.D."

Respondent's counsel argued that Respondent had a good faith basis for requesting the documentation after the EUO was conducted, and that the information sought was relevant and necessary in order to process the claim and confirm that there were no violations. He argued that despite receiving some items that were initially requested as verification, certain items still remain outstanding. Respondent has submitted the Affidavit of Amanda Smith, SIU investigator, sworn to on April 11, 2022. Ms. Smith asserted that Respondent had concerns of raises significant concerns, including potential "kickbacks" and questionable referrals.

Applicant's counsel argued that Applicant is in full compliance with these requests as its office submitted the majority of the documents requested by the Respondent. Applicant's counsel asserted that voluminous responses have been provided and the remaining items have been objected to by the Applicant as improper. She argued that the remaining items were overbroad, burdensome and unreasonable, and that such demands for these documents exceeded the bounds of permissible requests under the Regulations. Applicant's response dated 12/19/22 provided: medical records, Certification of Incorporation and Shareholder Agreement, a list of employees along with the licenses/certifications for the MRI technicians and licenses for the physicians, lease agreement for the Rosedale office along with proof of payment for the time period in dispute, lease agreement between PRQ Properties LLC and the applicant along with proof of payment for the time period in dispute, documentation identifying the make and model of the MRI machines used by [the applicant] and purchase agreements for the machines, copy of the service agreement with Numar Medical, and documentation that establishes the accreditation of [the applicant] with the Intersocietal Accreditation Commission.

Respondent issued a follow up letter on December 22, 2022, acknowledging the Applicant's response; and alleging the following requested documents remain outstanding:

"1. Lease agreement to which [the applicant] is a party and proof of each payment [the applicant] made thereunder regarding the location, 234-28A Merrick Blvd, Rosedale NY, 11422, at which [the applicant] purportedly rendered services during the time period of April 2021 through the present;

2. Purchase contract or agreement to which [the applicant] is a party and proof of payment regarding the location, 234 West Merrick Rd. Valley Stream, NY 11580, at which [the applicant] purportedly rendered services during the time period of February 2020 through the present; GEICO acknowledges that [the applicant] provided a lease agreement between PRQ Properties LLC and [the applicant] and proof of payment from April 2022 through September 2022 but did not provide proof of payment for the time period of April 2020 through April 2022 or a purchase agreement for the property as testified to by Dr. Qureshi (page 32, line 7).

3. Documents relating to the income and expenses of [the applicant], such as bank statements from [the applicant]'s corporate Chase bank account including deposit and withdrawal logs from January 1, 2020 through the present, canceled checks (front and back) that evince payments from this account, and corporate tax returns (including quarterly reports);

4. A complete list of all the employees who are employed with [the applicant], and who provide or who have provided services on behalf of [the applicant], documents identifying the relationship between each individual and [the applicant] (i.e. W-2s, 1099s, and/or K-1s); GEICO acknowledges that [the applicant] previously provided a complete list of all employees but indicated that [the applicant] is not in possession of W-2s, 1099s, or K-1s for 2022. However, Dr. Qureshi testified that many employees have been employed with [the applicant] since 2021 (page 48, line 22) (page 55, line 11), (page 56, line 17) (page 57, line 7) (page 60, line 4) (page 63, line 6). Accordingly, GEICO reiterates its demand for the documents previously requested as part of item #4.

5. Any written partnership contract with co-owner Robert Solomon, MD."

The Applicant responded to this letter on January 10, 2023, the letter stated as follows: "Proof of lease payments prior to the dates of service in dispute are irrelevant to [the respondent's] investigation into [the applicant's] current eligibility for reimbursement of No Fault claims. Similarly, W2's, 1099's, and/or K-1's for previous years have no relevance to services rendered in 2022."

Based on the evidence presented neither party ignored the verification requests or response. The Applicant communicated that verification is deemed closed and it was not required to submit any further information as the Respondent's requests were not proper. Based on Applicant's position Respondent in turn issued a denial. The question is whether Applicant's response to Respondent's verification requests would be considered sufficient compliance, and whether the Respondent's requests were beyond the scope of

the verification process and therefore would be considered improperly requested materials.

"The regulations do not give the insurer the right to ask an assignee to produce documents relating to the corporate structure or finances of a medical provider. Upon receipt of the completed verification form, the insurer can request additional verification. The regulations only permit the insurer to obtain written information to verify a claim." See Dynamic Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co., 2010 Slip Op 20285 (Dist. Ct. Nassau Co. July 15, 2010) (Emphasis added). See also, Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co., 33 Misc. 3d 1236(A), 941 N.Y.S.2d 536, 2011 N.Y. Slip Op. 52255(U) at 3 (Dist. Ct. Nassau Co. 2011) ("The demand for information relating to a Mallela defense is not obtainable through verification."); Island Chiropractic Testing, P.C. v. Nationwide Ins. Co., 35 Misc. 3d 1235(A), 953 N.Y.S.2d 550 (Dist. Ct. Suffolk Co., C. 2012)("Permitting an insurer to obtain written documents such as tax returns, incorporation agreements or leases regarding a potential fraudulent incorporation 'Malella' defense as part of the verification process defeats the stated policy and purpose of the no-fault law and carries with it the potential for abuse.")

After thorough review and consideration of all submissions, I find that based on the evidence presented, Applicant has satisfied its obligation to respond to Respondent's verification requests. The responses provided are found to meet Applicant's burden as they are arguably responsive. Applicant has responded to these requests providing the majority of the verification materials requested and asserting legitimate legal objections with respect to the financial documents. I further find that Respondent has not come forward with sufficient proof establishing a good faith basis and need for the financial documentation requested. Moreover, I also find that under the circumstances, Respondent's denials are not a proper remedy. Pursuant to 11 NYCRR 65-3.8(b)(3), if the requested verification is not received in 120 days, Respondent may, but is not required to, deny the claim. This section of the amended regulation was not intended to justify denial of a claim where an Applicant has made a good faith effort to comply with verification requests. In this case, Respondent may not rely on this provision of the regulation as Applicant complied by responding to most of the verification requests and asserting legitimate objections to the remaining documents. As a result, this claim is awarded.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Applicant.

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
	Star Medical Diagnostic, PC	04/05/23 - 04/05/23	\$966.54	Awarded: \$966.54
Total			\$966.54	Awarded: \$966.54

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/26/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based on the submission of a timely denial, interest shall be paid from the above date, until the date that payment is made at a rate of 2% per month.

C. Attorney's Fees

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

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 New York

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

12/16/2023

(Dated)

Alina Shafranov

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:
3e417d695df4e4b3654743c695eba9cb

Electronically Signed

Your name: Alina Shafranov
Signed on: 12/16/2023