

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

eMed Pharmacy Corp.
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-22-1275-9867

Applicant's File No. 86857

Insurer's Claim File No. 0659649148

NAIC No. 29688

ARBITRATION AWARD

I, Teresa Girolamo, Esq., 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: S.E.

1. Hearing(s) held on 12/20/2023
Declared closed by the arbitrator on 12/20/2023

Aleksey Selipanov, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Juliya Khodik, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$590.19**, 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 issue is whether this arbitration is premature due to outstanding verification.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing. This decision is based on my review of that file, as well as the arguments of the parties at the hearing. Each of the parties appeared via ZOOM.

Decision: Applicant's claim is dismissed without prejudice.

Legal Analysis:

As a complete proof of claim is a prerequisite to receiving no fault benefits, a claim need not be paid or denied until all demanded verification is provided (see, 11 NYCRR 65- 3.5[c]; *Montefiore Med. Ctr . NY Central Mutual Fire Ins. Co.*, 9 A.D.3d 354, 780 N.Y.S.2d 161 (2nd Dep't 2004); *NY & Presbyterian Hosp. v. American Transit Ins. Co.*, 287 A.D.2d 699, 733 N.Y.S.2d 80 (2nd Dep't 2001); *Hosp. for Joint Diseases v. Elrac, Inc.* , 11 A.D.3d 432, 783 N.Y.S.2d 612 (2nd Dep't 2004).

When verification has properly been requested on a claim, a follow up request has been issued and verification has not been received, any action or arbitration to collect that claim is premature. *Metroscan Medical Diagnostics PC v. Progressive Cas. Ins. Co.*, 15 Misc.1.3d 126A, 836 N.Y.S.2d 500, 2007 NY Slip Op 50500U, 2007 N.Y. Misc. LEXIS 903 (App. Tm, 2nd Dep't 2007); *Doshi Diagnostic Imaging Servs. v. State Farm Ins. Co.*, 16 Misc.3d 42, 842 N.Y.S.2d 153, 2007 NY Slip Op 27193, 2007 Misc. LEXIS 3524 (App. Tm,2nd Dep't 2007); *Elmont Open MRI & Diagnostic Radiology P.C. d/b/a/ All County Open MRI & Diagnostic Radiology v. State Farm Ins. Co.*, 15 Misc.3d 139A, 841 N.Y.S.2d 819, 2007 NY Slip Op 50988U, 2007 N.Y. Misc. LEXIS 3526 (App. Term, 2d Dept 2007).

If a provider, who has failed to respond to verification requests, brings an action, the action should be dismissed as premature. *Elite Chiropractic Services PC v. Travelers Ins. Co.*, 9 Misc.3d 137(A) (App Tm, 1st Dep't 2005).

Facts:

On 2/18/2022 S.E. was involved in a motor vehicle accident. On 9/16/2022 Applicant filed for Arbitration seeking \$590.19 as follows:

N450228043305 60 Zznaproxen soidum 550 MG \$176.00

N400093645098 60 Zzesomeprazole Magnesium 20 mg \$414.07

Total Billed: \$509.19

Upon receipt of the bill on 10/6/2022 Respondent sent out timely verifications on 10/20/2022 and again on 11/22/2022. On 11/23/2022 Applicant filed for Arbitration.

According to each of the verifications Respondent requested the following:

- *Name and license (to the extent applicable) of any/all owners of EMed Pharmacy Corp.;*
- *Name and license of the Supervising Pharmacist;*
- *Name and license of the Pharmacist who performed and/or supervised the billed for service;*
- *Letter of medical necessity addressing the specific need for the medications and/or durable medical equipment prescribed to the patient;*
- *A copy of the prescriptions for the medications and/or durable medical equipment dispensed to the patient;*
- *Name and address of any and all supplier(s), including but not limited to, manufacturers and wholesale providers, from whom you obtained the medication and/or durable medical equipment. Please also include a copy of all invoices which reflect charges for said medications and/or durable medical equipment and proof of payment.*
- *With respect to all compounded medications, please identify each ingredient using the applicable National Drug Code and the corresponding quantity. Additionally, for each ingredient identified, please provide the corresponding Average Wholesale Price. Please provide information regarding how you determined the amount(s) charged to Allstate for the at-issue medication and/or durable medical equipment. Please provide a copy of all publications and/or guidelines that were used in determining the amount to charge relative to the above-referenced patient;*
- *All paperwork regarding formation, purchase and/or transfer of business interests of EMed Pharmacy Corp. including but not limited to ownership agreements, correspondence, certificates of incorporation, annual reports and receipts for filing;*
- *Names and address of all individuals and entities with whom EMed Pharmacy, Corp. has entered into agreements for the lease or rental of office space. Please also include a copy of said lease agreements;*

• *Names and address of all individuals and entities with whom EMed Pharmacy, Corp. has entered into agreements for the provision of administrative, management, consulting, advertising, marketing, delivery, billing and collection services. Please also include a copy of said agreements as well as any/all marketing and advertising materials;*

Pursuant to the terms of the applicable insurance policy and section 11 N.Y.C.R.R. 65-3.5, et seq., of the No-fault regulations, please be advised that the processing of your bill and claim submission is being delayed pending compliance with the requests for additional verification noted above.

In this case Applicant questioned as to whether or not the verifications were received by its client. However, Applicant did not have any information one way or the other. As such, in this case, with the second verification only one day prior to filing, I find in this case that this matter was filed prematurely in addition to no evidence of any compliance. Therefore, this matter is dismissed without prejudice.

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 claim is DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of CT
SS :
County of Fairfield

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

12/20/2023
(Dated)

Teresa Girolamo, Esq.

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:
5dad25208a785fee9b43cd0deac5cee4

Electronically Signed

Your name: Teresa Girolamo, Esq.
Signed on: 12/20/2023