American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dynamic Medical Imaging PC (Applicant)	AAA Case No.	17-22-1253-4964
	Applicant's File No.	RFA22-307751
- and -	Insurer's Claim File No.	000353268 001
	NAIC No.	10839
Country-Wide Insurance Company (Respondent)		

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: V.W.

1. Hearing(s) held on 12/22/2023
   Declared closed by the arbitrator on 12/22/2023

   Helen Feingersh, Esq. from The Russell Friedman Law Group LLP participated virtually for the Applicant

   Ellen Maisto, Esq. from Jaffe & Velazquez, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$4,959.55**, was AMENDED and permitted by the arbitrator at the oral hearing.

   At the time of Arbitration Applicant reduced the amount in dispute to $4,476.00.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   The issue is whether or not there is 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.

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.YS.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 C as. Ins. Co.*, 15 Misc.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 1/20/2021 V.W. was involved in a motor vehicle accident. Applicant originally billed Respondent $4,959.55 for dates of service of 3/1/2021 - 3/26/2021. According to the AR-1 and the amendments I note the following:

For bill 1, same was billed in the original amount of $1,970.90 for date of service. At the time of the Arbitration Applicant reduced this amount to $1,728.98. For the second bill, in the original amount of $1,833.08 for date of service of 3/15/2021 the bill was amended to $1,691.45. For the third bill in the amount of $1,055.57, same was for date of service of 3/26/2021. In looking at the bills same were submitted by Applicant Dynamic Medical Imaging c/o counsel.

In this case Respondent contends that it sent timely verifications to Applicant care of the law firm and to the injured party requesting the following:

> *MRI Films/CD*
>
> *Section 16 verifying treatment; provider name, provider license number and business relationship to PC.*
>
> *Section 17 verifying PC owner name with license credentials*
>
> *(Revised 1/04) NF-3*
>
> *Proper Signature required: No Stamps/Electronic Signatures*
>
> *MRI Safety Questionnaire*

At the time of the Arbitration Applicant argues that there is no Affidavit in this case regarding mailing, nor is there any documentation that the items are still outstanding. At the time of the Arbitration I advised that if there is an issue regarding mailing I would request a post hearing brief. Respondent advised that it actually uploaded today an Affidavit of Jessica Mena-Sibrian with proof of mailing.

Despite the document being offered today, same was reviewed and discussed at the time of the hearing in length. It is noted that Jessica Mena-Sibrian is an employed with Respondent with personal knowledge of the mailing process. Paragraphs 9-11 addresses the verifications per bill and affirms that Respondent has not received "all documents in response to its verifications". Despite the possible ambiguity as to what does "all documents" mean, at paragraph 16, that it required the completed NF-3, with sections 16 & 17 completed, hand-signed, MRI films/ cd, and MRI questionnaire.

Decision:

Based upon the evidence offered and the arguments presented I therefore find that there is outstanding verification. Therefore Applicant's claim 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.

12/22/2023
(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:
2ad406132dd3a3b02e1665cf47c8fa82

Electronically Signed

Your name: Teresa Girolamo, Esq.
Signed on: 12/22/2023