

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dynamic Medical Imaging PC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-22-1253-4499

Applicant's File No. RFA22-307602

Insurer's Claim File No. 0463378960006

NAIC No. 36447

ARBITRATION AWARD

I, Antonietta Russo, 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 11/30/2023
Declared closed by the arbitrator on 11/30/2023

Ryan Woodworth from The Russell Friedman Law Group LLP participated virtually for the Applicant

Melissa Diedro from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,970.90**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the claim amount to \$1728.98 to reflect the appropriate charges and resolve any fee schedule issues.

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

3. Summary of Issues in Dispute

The Assignor, a 39-year-old male, was reportedly involved in a motor vehicle accident on July 23, 2021. Following the accident, Assignor suffered injuries which resulted in him seeking medical treatment. Thereafter, the Assignor underwent MRI studies of the cervical and lumbar spine on August 28, 2021.

Applicant is seeking reimbursement for these services; however, the claim was denied based on outstanding verification. The only issues presented at the hearing were:

- 1.) Whether the Respondent has established that it timely and properly requested verification from the Applicant; and, if so, whether the Respondent can sustain its denial based on 120 days?

4. Findings, Conclusions, and Basis Therefor

The Applicant and the Respondent submitted documentary evidence in support of their respective positions. All such evidence is contained within MODRIA maintained by the American Arbitration Association, as of the date of the hearing. The below noted decision is based upon my review of the submitted evidence, along with the oral argument of the representatives present at the hearing.

In support of its claim for reimbursement of these services, Applicant has submitted an assignment of benefits form with the bill. Additionally, Respondent has submitted requests for additional verification of the subject bill, thereby acknowledging receipt of said bill. Accordingly, Applicant has made out a prima facie case for reimbursement as a matter of law. (See, Insurance Law § 5106(a); *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742 [2d Dept. 2004].)

Once applicant makes out a prima facie case, the burden shifts to respondent to timely request additional verification, deny or pay the claim. (See *Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co.* 9 NY3d 312 [2007]; 11 NYCRR § 65.15[d][1],[2]; 11 NYCRR 65.15[g][3]) ("[w]ithin 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part.") Most defenses are precluded if not preserved in a timely denial of claim. (See *Central General Hospital v. Chubb Group of Insurance Companies*, 90 NY2d 195 [1997].) In the instant matter, Respondent denied the claim on March 26, 2018.

OVERVIEW

The EUO of the applicant was held on June 2, 2021. Thereafter, Respondent sought additional verification by way of a post-EUO demand. The issue is whether Respondent's demands are reasonable and, if so, whether the requested information remains outstanding, never provided and properly denied based on the 120-day rule.

In this matter, the Respondent sent post-EUO demands by letters dated October 7, 2021 and November 9, 2021, requesting the following information:

1. The original purchase agreement for Dynamic Medical Imaging from Dr. Brownstein; 2. The finance agreement between Dr. Rijsinghani and/or Dynamic Medical Imaging and Foundation; 3. The refinance agreement between Dynamic Medical Imaging and Dr. Rijsinghani and Foundation; 4. The third agreement between Dynamic Medical Imaging and Dr. Rijsinghani and Foundation; 5. Proof of payments made by Dr. Rijsinghani and/or Dynamic Medical Imaging to Foundation; 6. The original purchase agreement with Dr. Brownstein for the purchase of Dynamic Medical Imaging; 7. The second purchase agreement with Dr. Brownstein for the purchase of Dynamic Medical Imaging; 8. Proof of payments made by Dr. Rijsinghani and/or Dynamic Medical Imaging to Dr. Brownstein; 11. The corporate tax returns for Dynamic Medical Imaging for 2017, 2018, 2019, 2020 and quarterly returns for 2021; 12. The separation agreement between Dynamic Medical Imaging and/or Dr. Rijsinghani with Tom Mallilo and/or Jeff Byrne and/or All County, LLC and/or any other entity on their behalf; 13. The past 12 months of bank statements for Dynamic Medical Imaging; 14. A copy of the Workers' Compensation and Disability policies of insurance for Dynamic Medical Imaging; 15. Any and all employment agreements and/or contracts between Dynamic Medical Imaging and any individual, entity, corporation or association; 16. A copy of the general ledger and/or Quickbooks statement for 2018, 2019, 2020 and up to current date in 2021; 17. The profit and loss statement for Dynamic Medical Imaging for 2018, 2019, and 2020; 18. All lease agreements, separation agreements, and contracts associated with Dr. Rijsinghani and/or Dynamic Medical Imaging concerning the location of 409 Rockaway Avenue utilized by Dynamic Medical Imaging; 19. Any and all employment contracts, management contracts, terms of employment entered into with any employee and/or vendor and/or service provider of Dynamic Medical Imaging since Dynamic Medical Imaging was reportedly purchased by Dr. Rijsinghani; 20. A copy of the lease for Dynamic Medical Imaging to operate at 7336 Grand Avenue; 21. A copy of all service contracts for all MRIs, x-rays and diagnostic imaging machinery; 22. A copy of the paperwork with regard to the release of the UCC filings filed by Foundation on Dr. Rijsinghani's medical facilities in the State of New Jersey; 23. A list of all employees of Dynamic Medical Imaging for the past five years; 24. A list of all individuals paid on an independent contractor and/or 1099 basis; 25. A copy of all W-2s issued to all employees of Dynamic Medical Imaging for 2018, 2019 and 2020; 26. A copy of all 1099s issued by Dynamic Medical Imaging for 2018, 2019 and 2020; 27. Any agreements between Dr. Rijsinghani and/or Dynamic Medical Imaging and All County, LLC and Tom Mallilo and/or Jeff Byrne and/or any other entities allowing for tube time rentals of Dynamic Medical Imaging

Applicant responded by providing certain documents and objecting to some of the demands. They advised Respondent that they had either supplied the information or were not in possession or control of the information sought by Respondent. Respondent maintains that this information remains outstanding.

LEGAL FRAMEWORK

As required by 11 NYCRR §65-3.5(b), the initial request for verification is to be made within 15 business days of receipt of the claim. A request that is sent beyond the 15 business days is still valid so long as it is issued within 30 days from receipt of the claim; such a deviation will simply reduce the insurer's time to pay or deny by the same number of days. 11 NYCRR §65-3.8(l). See Nyack Hosp. v. General Motors Acceptance Corp., 8 NY3d 294, 2007 NY Slip Op 02439 (Court of Appeals, 2007).

On the other hand, if the initial request for verification is made beyond 30 days from receipt of the claim, the request will be deemed a nullity and the time to pay or deny will have expired. Compass Med., P.C. v. Farm Family Cas. Ins. Co., 2015 NY Slip Op 51631(U) (App. Term 2nd, 11th and 13 Jud. Dists. 2015). Additionally, after 30 calendar days from the original request, the insurer has a regulatory duty to issue a second verification request within the following 10 calendar days. 11 NYCRR §65-3.6(b). However, in the absence of any such second request for verification, the insurer's time to pay, deny or request verification will not be tolled. Westchester Med. Ctr. v. Allstate Ins. Co., 112 AD3d 916, 2013 NY Slip Op 08616 (App. Div., 2 Dept, 2013).

The obligation to pay or deny a claim is not triggered until the insurer has received all of the relevant information that was requested. Hospital for Joint Diseases v. State Farm Mut. Auto. Ins. Co., 8 AD3d 533, 2004 NY Slip Op 05413 (App. Div., 2 Dept., 2004). If the insurer can demonstrate that the initial verification request and follow-up verification request were timely issued, and that no response was received, the matter will be deemed premature and not ripe for adjudication. Mount Sinai Hosp. v. Chubb Group of Ins. Cos., 43 AD3d 889, 2007 NY Slip Op 06650 (App. Div., 2 Dept., 2007).

If the insurer can demonstrate that the initial verification request and follow-up verification request were timely issued, and that no response was received, the matter will be deemed premature and not ripe for adjudication. See Mount Sinai Hosp. v. Chubb Group of Ins. Co., 43 AD3d 889, 2007 NY Slip Op 06650 (App. Div., 2 Dept., nd 2007).

Furthermore, 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..." Respondent also has a duty to communicate with Applicant and vice versa. The purpose of the No-Fault statute is to ensure prompt resolution of claims by accident victims. The parties' obligations are centered on good faith

and common sense. Any questions concerning communication should be addressed by further communication, not inaction. *Dilon Medical Supply Corp. v. Travelers Ins. Co.*, 7 Misc. 3d 927, 796 N.Y.S.2d 872 (Civ. Ct. Kings Co. 2005). The response to a verification request that is "arguably responsive" places the burden to take further action upon the carrier. *All Health Medical Care, P.C. v. GEICO*, 2 Misc.3d 907 (NY City Civ Ct. 2004). Moreover, as long as Applicant's documentation is arguably responsive to an insurer's verification request, the insurer must act affirmatively once it receives a response to its verification request. *Media Neurology P.C. v. Countrywide, Ins. Co.*, 21 Misc.3d 1101 (NY City Civ. Ct. 2005).

In the instant case, I find that Applicant has established its prima facie case, thereby shifting the burden to Respondent. Respondent had taken the Examination Under Oath of Applicant on June 2, 2021 before this bill was submitted.

Respondent acknowledges the responses provided by Applicant; however, Respondent maintains that additional items remain outstanding. "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); *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 'Mallela' 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.")

The record reflects that Applicant responded to the requests made upon it and then either objected to the demand or made it clear that the information was out of its control. Respondent was not satisfied with the responses.

Numerous arbitrators on the panel have ruled similarly regarding the same verification sought by Respondent

I find that Applicant has demonstrated "substantial compliance" with Respondent's verification requests in good faith. Applicant has produced numerous documents which have been requested and has also testified at an EUO. The Applicant adequately responded to all the demands made upon it by either affirmatively answering the demand, objecting to it, or advising that the information was outside of its control. Further, Applicant's counsel argued that

Applicant substantially complied, and any other requests are immaterial and onerous. The issue of Applicant's substantial compliance has previously been addressed by multiple Arbitrators including Arbitrator Joshua Adler in AAA Case No.: 17-22-1233-7004 where he was presented with substantially similar evidence and determined:

"First, it is far from clear that the above-referenced list of items supposedly still "outstanding" was accurate. There was, in fact, a response to the post-EUO requests response dated 6/17/21 as acknowledged in paragraph 17 of respondent's SIU Investigator, James Beadle's affidavit, sworn to December 2021. It would appear that respondent's above-referenced 12/13/21 list of "outstanding" items ignored or largely glossed over applicant's production of documents. For example, on page 1 of the 12/13/21 correspondence, counsel for respondent asserted that applicant failed to provide, inter alia, "the written agreement entered into by Dr. Rijsinghani and/or Dynamic Medical Imaging allowing Tom Mallilo and/or Jeff Byrne and/or All County, LLC to take over the day to day operations of Dynamic Imaging" -but -in a document included in respondent's submission, entitled "Liberty Mutual EUO/Questionnaire/Document," applicant clearly stated there is no such agreement. Similarly, on page 2 of the 12/13/21 correspondence, counsel for respondent asserted that applicant failed to provide a certain separation agreement (item 4) and certain employment agreements (item 6) -but • in the "Liberty Mutual EUO/Questionnaire/Document," applicant clearly stated there are no agreements.

More critically, I agree with the holdings of Arbitrator Jennifer Jacques-Miller - who ruled on the identical dispute (in substance) - that applicant had substantially complied with respondent's post-EUO requests for additional verification (see AAA Award No. 17-22-1233-6997). I am fully aware that Respondent suspects that the Applicant-radiology facility is conducting itself in an unlawful and/or fraudulent manner. However, claim verification in "No-Fault" practice is not akin to "discovery" under the CPLR. In this regard, Respondent took the Applicant's EUO and thereafter Applicant produced substantial documentation responsive to the post-EUO "requests for verification" of the claim. Following Applicant's EUO and substantial production of documents, Respondent had sufficient information/documentation/testimony to render a "prompt" decision on whether to pay or deny the subject claim within the meaning and intent of the no-fault regulatory structure. This is not the forum to conduct a full-blown discovery. The insurer is free to pursue such discovery, seek "stays" of arbitration and the like, in a DJ Action in the appropriate litigation/Court forum if it so chooses. On this record, I find for the Applicant and opinion that Respondent's denial was improper.

Accordingly, I find for Applicant and grant their claim.

Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for No-Fault benefits presently before 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	Amount Amended	Status
	Dynamic Medical Imaging PC	08/28/21 - 08/28/21	\$1,970.90	\$1,728.98	Awarded: \$1,728.98
Total			\$1,970.90		Awarded: \$1,728.98

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/08/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. 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(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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. 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)." This amendment takes into account that the maximum attorney fee has been raised from \$850.00 to \$1,360.00.

- 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 Nassau

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

12/27/2023
(Dated)

Antonietta Russo

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:
97a4ce5b8baff1a01489856576526fab

Electronically Signed

Your name: Antonietta Russo
Signed on: 12/27/2023