

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ridgewood Diagnostic Laboratory
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1288-5966
Applicant's File No. NF-28126-614779
Insurer's Claim File No. 637345257
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: M.V.

1. Hearing(s) held on 12/13/2023
Declared closed by the arbitrator on 12/30/2023

Anna Pereira, Esq. from Sanders Grossman Aronova PLLC participated virtually for the Applicant

Inna Vilig, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,016.06**, 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 Respondent properly denied Applicant's claims based upon the 120 Day rule?

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.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.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).

I note that the New York State Department of Financial Services, issues a 4th Amendment to the 11 N.Y.C.R.R . §65-3. Specifically the following section, 65-3.5 (o) which is effective for all dates of service on or after 4/1/13. Same clearly pertains to the case now before me.

11 N.Y.C.R.R . §65-3 (o) reads as follows:

(o) An applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. The insurer shall advise the applicant in the verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. This subdivision shall not apply to a prescribed form (NF-Form) as set forth in Appendix 13 of this Title, medical

examination request, or examination under oath request. This subdivision shall apply, with respect to claims for medical services, to any treatment or service rendered on or after April 1, 2013 and with respect to claims for lost earnings and reasonable and necessary expenses, to any accident occurring on or after April 1, 2013.

Facts:

In this case, M.V. was involved in a motor vehicle accident on 8/12/2021. According to Applicant's AR-1 filed on 3/1/2023 there are the following 2 bills:

Bill 1: \$884.80 DOS 3/16/2022

Bill 2: \$4131.26 DOS 3/16/2022

The total amount in dispute was \$5,016.06. According to Respondent's fee audit, for bill 1, the proper fee schedule is \$59.48 and for bill 2, the proper fee schedule is \$97.03 for a total amount in dispute of \$156.51.

On 6/1/2022 and again on 7/2/2022 Respondent sent verification to Applicant requesting the following information with respect to both bills:

- *The Examination Under Oath of the claimant*
- *Who are the current owners of the Applicant?*
- *Who referred the patient to this provider for screening? What drug(s) were being screened for?*
- *State the basis why this drug was suspected/screened for, and submit any documented red flags*
- *Did this patient have an opioid use in his/her history?*
- *Did the referring provider collect the specimen for Ridgewood? If so, was the referring provider compensated for this by Ridgewood or any other entity?*
- *Please provide a copy all of the Applicant's applications for a New York State Department of Health clinical laboratory permit?*
- *Does this provider and/or its owners including but not limited to dr. Zaitsev have a financial relationship with the referring provider and/or its owner, including lease and/or rental arrangements with the referring provider. If so, does this provider disclose the financial relationship to the patient? Please provide a copy of this disclosure, if applicable.*
- *Who were the results of the screening sent to?*

- *What was the basis for the amount of the requested reimbursement? Please provide documentation and/or calculations to support the choice of CPT code that differentiates it from similar CPT Codes for screening.*

- *What indications were present that indicated creatinine and/or phencyclidine should be tested for and/or confirmed?*

- *What were the dates that the specimen was collected, that it was received by Ridgewood, that it was analyzed and when a report was sent to the referring provider?*

At the time of the Arbitration Applicant contends that it did not receive the verification requests. Based upon said representation, the following disposition was issued:

Briefs due from Respondent by 12/29/2023:

Respondent is directed to upload an affidavit of mailing for the two verifications dated 6/1/2022 and 7/2/2022. The affidavit is to include who it was mailed to, the addresses for the parties, and to confirm that as of the date of the affidavit there is no response, and if there is response, to upload it and any follow ups. Failure to provide same will have a negative inference.

On 12/15/2023 Respondent uploaded an Affidavit of Deanne Pettinicchi, an employee with Respondent who has personal knowledge of the claim and have reviewed the entire claims file associated with claim number 637345257. At paragraph 8, Ms. Pettinicchi affirms that on 5/20/2022 Respondent received the bills in question and on 6/1/2022 the above mentioned verification was mailed to Applicant at 100 Garden City Plaza, Suite 500, Garden City NY 11530, to the EIPs, M.V. and C.V., along with Counsel Sanders, Grossman, Aronova, PLLC and the Law Offices of Smith & Brink, PC. were "ccd".

At paragraph 9, same confirms the mailing of the verification on 7/2/2022. According to the Affidavit no responses were received as such on 10/4/2022 Respondent issued denials based upon the 120 Day Rule.

Decision:

Based upon the evidence herein I find that Respondent has established its affirmative defense that it properly denied Applicant's bills, as timely verifications were sent to Applicant, Applicant failed to respond, and the bills were properly denied based upon the 120 Day Rule. Applicant's claims are denied.

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 DENIED in its entirety

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.

12/30/2023

(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:
b4295d5027231a6c3fc6700302bf317b

Electronically Signed

Your name: Teresa Girolamo, Esq.
Signed on: 12/30/2023