

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

eMed Pharmacy Corp.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1318-0293
Applicant's File No.	RFA23-321501
Insurer's Claim File No.	0683131510000002
NAIC No.	22055

ARBITRATION AWARD

I, Nada Saxon, 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 06/25/2024
Declared closed by the arbitrator on 06/25/2024

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

Edwin Maldonado from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$616.51**, 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
Assignor (XMO) was a 25-year-old male involved in an accident on 11/27/22.

Applicants seek payment for naproxen sodium, esomeprazole, and Tylenol provided on 2/23/23.

Respondent denied the claim asserting Applicant failed to comply with its verification requests within 120 days.

The issue is whether Respondent has established its 120-day/NYCRR 65-3.5(o) defense.

4. Findings, Conclusions, and Basis Therefor

This case was conducted using the documents submitted by the parties in the ADR Center and the oral arguments of the parties. No witnesses testified at this hearing. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

120-Day/Outstanding Verification

Applicant (Benjamin Pinhasov) appeared for an EUO on 11/15/22 and Respondent continues to seek post-EUO verification in requests sent timely in relation to the claim. In a letter dated 3/22/23, Applicant responded to the initial post-EUO requests, providing some documentation, objecting to providing tax and financial records prior to July 2022 (the earliest dates of service subject to the EUO), and requesting additional time to submit tax and financial records from 2022. In a letter dated 3/31/23, Respondent responded as follows:

- 1. All W-2, 1099, K-1 forms, and employment agreements (where applicable) for all persons who have performed work for or on behalf of eMed, including, but not limited to, any documentation regarding employee status or relationship of any eMed employee from January 1, 2021 to the present;*

According to the Internal Revenue Service, W2s and 1099s must be issued to their recipient by January 31, 2023. Your representation that the above-requested documents are not yet available is at odds with Federal law. Because none of the above documents were provided, GEICO renews its request. Moreover, your representation that no 2022 employment agreements exist is contrary to Pinhasov's testimony. See p. 150 l. 2 of the EUO transcript. GEICO renews its request.

- 2. Application documents, registration forms, and any accompanying documents evidencing ownership submitted by or on behalf of eMed to the New Jersey and New York Boards of Pharmacy in connection with any request for registration or licensure and/or the transfer of any registration or license;*

GEICO acknowledges receipt of the requested verification, including the nonresident New York State Board of Pharmacy certificate issued to eMed. However, the certification expired on January 31, 2023. Accordingly, GEICO requests an updated certificate evidencing eMed's certification to operate in New York State.

- 3. All payroll and tax returns filed from January 1, 2021 to the present by or on behalf of eMed;*

According to the Internal Revenue Service, corporate tax returns must be filed by March 15, 2023. Your contention that the above-requested documents are not yet available is at odds with Federal law. Because none of the above documents were provided, GEICO renews its request.

4. *Copies of bank statements from January 1, 2021 to the present relating to eMed's bank account(s), including copies of cancelled checks, from January 1, 2021 to the present;*

5. *Copies of licenses and certifications for all pharmacists and pharmacy technicians who have been employed by eMed from 2021 to the present;*

GEICO acknowledges receipt of some licenses and certifications. However, nothing was provided for pharmacist Jennifer Kim. GEICO renews its request.

6. *All lease agreements for the locations where eMed operates, including those locations within Hudson Regional Hospital, including both the first and second floors, and any proofs of payment thereunder for use of said locations;*

GEICO acknowledges receipt of eMed's lease agreement and Timeshare License Agreement with Hudson Regional Hospital. GEICO also acknowledges receipt of some invoices. However, the October 2022 invoice and proofs of payment were not provided. GEICO renews its request.

7. *Copies of all purchase invoices, wholesale receipts, and related documentation, including copies of proofs of payment made thereunder, evidencing the purchase of all pharmaceutical products dispensed to the eligible injured persons listed on Exhibit "A;"*

While GEICO acknowledges receipt of invoices, Anda Transaction confirmation emails, and a CityMed audit report, proofs of payment were not provided. GEICO renews its request.

8. *Copies of any written agreements/contracts and proofs of payment thereunder between eMed and any pharmaceutical wholesalers utilized by eMed from 2021 to the present;*

GEICO acknowledges receipt of an Anda rebate Agreement, two signature pages for a Kinray security agreement and "Kinray returned Goods Authorization Ongoing Assurance form." However, the verification provided is not fully responsive to GEICO's request. Pinhasov testified that he has agreements with the four pharmaceutical wholesalers utilized by emed. See p. 116 l. 5; 119 l. 4 of EUO transcript. GEICO renews its request.

Additionally, in its specific initial request dated 3/13/23 in response to this claim, Respondent specified the following:

9. *Copies of the assignment of benefit forms, fully signed delivery receipts/slips, and original signed prescriptions for the pharmaceutical products eMed*

dispensed to the patients listed in eMed Pharmacy Corp 20230310-0048, and which resulted in eMed submitting a claim for reimbursement to GEICO;

Pinhasov testified that eMed does not submit unsigned prescriptions for reimbursement and that eMed's pharmacy system maintains the signed prescriptions See EUO transcript at p. 225: l. 13; p. 226: l. 10; p. 229-230. Accordingly, GEICO requests signed prescriptions for the pharmaceutical products eMed dispensed to the patients listed in eMed Pharmacy Corp

Respondent argues Applicant did not respond to the specific requests sent in relation to the claim at issue. While I note the communication between the parties addressing the initial post-EUO requests, I do not find it sufficient based on the specifics of this matter. As discussed above, Applicant responded to similar requests on 3/22/23. However, Respondent specifically seeks the signed prescriptions for the claim at issue. Applicant does not demonstrate a response to this item pertaining to Assignor and the submission in this matter does not contain a signed prescription. As such, Applicant's reliance on prior responses addressing different patients is insufficient.

Furthermore, even taking the prior response on 3/22/23 into consideration, Applicant stated "Original signed prescriptions cannot be surrendered," with no other reasoning or explanation. Respondent seeks a copy of the original signed prescription, not the original itself. Respondent cites Applicant's EUO testimony in support of its request, asserting Applicant testified that it does not submit unsigned prescriptions for reimbursement and that it maintains the signed prescriptions. Initially, Applicant's testimony denies that unsigned prescriptions are submitted for payment, but then later indicates the signed versions are not submitted for billing because "it was never brought to my attention." Applicant testified original signed versions can be printed but does not provide a clear reason for why they are not submitted with the bills. As such, Applicant does not demonstrate lack of possession or control, nor does Applicant provide a reasonable justification for not providing a signed copy of the original prescription.

Additionally, Respondent asserts that in its 3/31/23 response to Applicant, it requested an updated certificate evidencing Applicant's certification to operate in New York State as the one provided expired on 1/31/23. The same request was made in relation to this claim as well. While the Applicant did submit evidence of a renewal application in its 3/22/23 response, Applicant does not demonstrate it responded to Respondent's inquiry for an updated certificate. This is also relevant to the specific claim as the date of service in dispute here falls shortly after 1/31/23.

I note the SIU investigator's affidavit dated 4/12/23 by Lynette Stone discusses several issues that led Respondent to investigate the veracity of prescriptions submitted by Applicant. Therefore, despite Applicant failing to submit a clear objection to providing a copy of the original signed prescription and updated certificate, I find Respondent set forth a good faith basis for these requests.

Therefore, without reaching Applicant's objections and/or time extension request regarding the tax and financial requests, Applicant fails to demonstrate it sufficiently

responded to the requests discussed above that pertain to the disputed services rendered to Assignor. Applicant does not provide a valid objection and/or response to Respondent's request for a copy of the original signed prescription. Accordingly, Respondent sufficiently establishes its defense pursuant to NYCRR 65-3.5(o). Applicant fails to rebut Respondent's defense.

Based on the foregoing, Applicant's claim is 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 CA

SS :

County of San Diego

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

07/16/2024
(Dated)

Nada Saxon

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:
bba531f67b50eddab83ac6c3de05efa2

Electronically Signed

Your name: Nada Saxon
Signed on: 07/16/2024