

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RadCiti Imaging, P.C.
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1323-3613

Applicant's File No. 2989351

Insurer's Claim File No. 0705892552

NAIC No. 29688

ARBITRATION AWARD

I, Joseph Endzweig, 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 07/16/2024
Declared closed by the arbitrator on 07/16/2024

Neda Melamed, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Marie-Ann Inguanti from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,934.24**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount was amended to \$1,692.50 to conform to the fee schedule.

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

3. Summary of Issues in Dispute

This arbitration arises out of treatment of a 29 year old male for injuries sustained in a motor vehicle accident occurring on 2/24/23. Applicant seeks reimbursement for MRI's performed on 3/15/23 and billed at \$1,934.24. The amount was amended to \$1,692.50 to conform to the fee schedule. Respondent denied reimbursement based on the assignor's failure to appear for an EUO.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the documentation contained in the Electronic Case Folder which is maintained by the American Arbitration Association.

This arbitration arises out of treatment of a 29 year old male for injuries sustained in a motor vehicle accident occurring on 2/24/23. Applicant seeks reimbursement for MRI's performed on 3/15/23 and billed at \$1,934.24. The amount was amended to \$1,692.50 to conform to the fee schedule. Respondent denied reimbursement based on the assignor's failure to appear for an EUO.

The proof submitted by the respondent demonstrates that the respondent scheduled three separate EUO's. The Respondent submitted copies of the scheduling letters. The letters dated 4/27/23, 5/30/23, and 7/6/23 advised of examinations scheduled for 5/18/23, 6/23/23, and 7/21/23, respectively. The EUO scheduled for 5/18/23 was adjourned at the request of the assignor. The Assignor allegedly failed to appear for either of the other two examinations. Respondent submitted proof of mailing for the scheduling letters. In addition, respondent submitted EUO transcripts from the attorneys assigned to conduct the EUO's, indicating that the Assignor did not appear.

It is well settled that a health care provider establishes its prima facie entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

The defense that the Applicant failed to attend an EUO requires proof that the Applicant was properly notified regarding the EUO and that the Applicant failed to attend. (See *Daras v. GEICO Ins. Co.*, 881 N.Y.S. 2d 362 (Table) 2009 N.Y. Slip Op. 50438 (U) (App.Term 2d, 11th & 13th Dists. 2009).

To establish its defense, an insurer must demonstrate that two separate requests for the EUO were timely and properly mailed to the Applicant and that the Applicant failed to appear on either of the scheduled dates and times. The insurer must also establish that the scheduling letters were properly addressed and contained the requisite language.

Counsel for Applicant notes that the scheduling letter dated 5/30/23 scheduled the EUO for 6/23/23 at 1:00 PM. Respondent submits no-show transcripts for the EUO's. However, the transcript relative to the 6/23/23 date, indicates that the EUO was scheduled for 10:00 A.M. Respondent's attorney appeared at 10:00 A.M. and the record was closed at 10:32 A.M.

Clearly, Respondent has not submitted sufficient proof of the failure to appear inasmuch as the EUO was closed at 10:32 A.M., despite the fact that the EUO was scheduled for 1:00 P.M.

Applicant's counsel further argues that the second EUO scheduling letter was untimely because it was not sent within ten days of the first missed EUO on 6/23/23. Applicant argues that Respondent's defense should therefore be precluded.

Pursuant to 11 NYC Section 65-3.6(b), upon the Assignor's failure to appear for the first IME scheduled for 6/23/23, the respondent was required to send a follow-up verification request (a second rescheduling letter) within 10 days after Assignor's non-compliance. Thus, the Respondent was obligated to send its follow-up request by 7/4/23. Here, the Respondent waited until 7/6/23 to send the rescheduling letter.

In AAA Case No. 17-22-1279-3839 Arbitrator Mitchell Lustig states:

It should be noted that EUO and IME verification requests are not open ended where the regulations require the Respondent to wait 30 days before sending a follow-up request. With EUO and IME verifications, it has been held that the follow-up period runs from the date of non-compliance, to wit, the date of first missed IME. See *Brooklyn Heights Therapy, P.C. v. New York Central Mutual Fire Insurance Company*, 36 Misc.3d 134(A), 2012 N.Y. Slip Op. 51337(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2012); *Kings Medical Supply, Inc. v. Kemper Auto & Home Ins. Co.*, 7 Misc.3d 128(A), 2005 N.Y. Slip Op. 50450(U) (App. Term 2nd and 11th Jud. Dists. 2005); *A.B. Medical Services, PLLC v. Utica Mutual Insurance Company*, 10 Misc.3d 50, 2005 N.Y. Slip Op. 25456 (App. Term Second Dept. 2005); *Imperium Insurance Company v. Jamie Gutierrez, MD*, 2015 WL 9254197 (Sup Ct. NY. Co. 2015) (second EUO scheduling letter sent within 13 days after the first missed EUO is untimely).

Arbitrator Lustig further notes:

This interpretation is in full accord with the Opinion Letter of the New York State Department of Insurance, dated February 14, 2005, which states as follows:

In the case of a missed IME by an eligible person, the 'insurer shall within 10 calendar days follow-up with the party from whom the verification was requested, either by telephone call, properly documented in the file or by mail' {citing 11 NYCRR Section 65-3.6(b)}. In this instance the insurer is required to contact the person in order to afford the person a second reasonable opportunity to attend an IME.

In *Lotus Acupuncture v. State Farm Mutual Automobile Insurance Company*, 39 Misc.3d 829, 2013 N.Y. Slip Op. 23098 (N.Y. Civ. Ct. Queens Co. 2013), a case involving the same issue, the Court, citing an opinion letter from the Superintendent of

Insurance dated December 22, 2006, held that "the 10 day calendar day deadline for sending a follow-up verification request is measured from the date the initial EUO is missed."

In view of the foregoing, I find that Respondent's denial cannot be sustained.

Accordingly, I find in favor of the Applicant and award the sum of \$1,692.50.

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
	RadCiti Imaging, P.C.	03/15/23 - 03/15/23	\$1,934.24	\$1,692.50	Awarded: \$1,692.50
Total			\$1,934.24		Awarded: \$1,692.50

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/31/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall run from the date the request for arbitration was received by the AAA.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d).

- 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 Westchester

I, Joseph Endzweig, 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)

Joseph Endzweig

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:
287dc2e9320292f390524e6f3e77be0b

Electronically Signed

Your name: Joseph Endzweig
Signed on: 07/16/2024