

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Refuah Diagnostics LLC
(Applicant)

- and -

Nationwide General Insurance Company
(Respondent)

AAA Case No. 17-23-1284-8112

Applicant's File No. 166.842

Insurer's Claim File No. 532191-GM

NAIC No. 23760

ARBITRATION AWARD

I, Anne Malone, 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: EIP

1. Hearing(s) held on 06/14/2024
Declared closed by the arbitrator on 06/14/2024

Sakrit Srivastava, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Michelle Rita, Esq. from Hollander Legal Group PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$318.94**, 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 41 year old EIP reported involvement in a motor vehicle accident on October 4, 2021; claimed related injury and underwent testing of the autonomic nervous system provided by the applicant on October 14, 2021.

The applicant submitted a claim for the technical component of these medical services, payment of which was denied by the respondent on the grounds that the applicant is performing medical services and is not owned by a licensed professional or properly incorporated.

The issue to be determined at the hearing is whether the respondent can establish its defense based on licensing and improper incorporation.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

This claim involves payment for the technical component of neurological testing provided by an the applicant which the respondent contends is not owned by a licensed professional or properly incorporated in New York State.

11 NYCRR§ 65-3.16(a) (12) states in pertinent part:

A provider of healthcare services is not eligible for reimbursement under section 5102(a)(1) of the Insurance Law if the provider fails to meet any applicable New York State or local licensing requirements necessary to perform such service in New York or meet any applicable licensing requirements necessary to perform such service in any other state in which such service is performed.

There is no right to no-fault benefits if the provider is not properly incorporated. (11 NYCRR §65.15 and Insurance Law §5108.)

Pursuant to New York Education Law, "all professional corporations engaging in the practice of medicine must file copies of the certificate of incorporation with the Department of Education and obtain certificates of authority to practice medicine from this department." See NY Education Law §65-7 (4)(c.)

Additionally, New York Business Corporation Law §1503 requires that states that "professional corporations shall be under the supervision of the regions of the University of the State of New York" and further requires that "a Certificate of Incorporation for such medical corporations must specify the names of all shareholders, directors and officers of the corporation and include documentation that certifies such individuals licensed to practice medicine."

Based on these requirements, only properly owned and licensed professional medical corporations may bill and seek recovery from a no-fault insurance carrier.

To support its defense, the respondent submitted affidavits by Linda Arnold and Russell Arnold, claims specialists in its employ.

There have been numerous prior awards regarding this matter. At a prior hearing, (AAA case no. 17-23-1284-7174) Arbitrator Watford relied upon the relevant regulations and the Russell affidavits and found in favor of the respondent. He stated in pertinent part:

Based on the documents submitted and the arguments of

counsel, I find in favor of the Respondent and deny the

Applicant's claim in its entirety. Respondent submits an

affidavit from Linda Arnold, a claims specialist from

Nationwide General Insurance Company. Ms. Arnold's

very detailed affidavit noted that that she is responsible

for investigating medical providers seeking No-Fault

benefits from NATIONWIDE by verifying that they are

valid corporations and/or businesses as identified by State Farm Mutual

Auto

Ins. Co. v. Mallela , 4 N.Y.3d 313 (2005).

She is familiar with the claims presented by REFUAH

DIAGNOSTIC LLC ("REFUAH") in the scope of her

responsibilities, her knowledge having come from her

personal review and examination of the documents and

materials kept and maintained in the file of Nationwide.

Nationwide has denied the bills received from REFUAH,

as it is not a professional corporation (i.e., P.C., PLLC)

and is not entitled to receive No-Fault reimbursements for the subject services. Applicant, REFUAH is not a professional corporation and cannot render professional services or the "technical component" of a professional service. There is nothing in the No-Fault Regulation that permits REFUAH to bill for the technical component of a professional service. REFUAH is neither a Professional Corporation (PC) nor a Professional Limited Liability Corporation (PLLC). The owner of REFUAH does not possess any professional licenses. As such, Applicant is not permitted to render or bill for any professional services or the technical component of a professional service. I find the affidavit of Ms. Arnold to be persuasive in showing the Applicant is not entitled to receive compensation for the services rendered...

The applicant did not submit any evidence to refute the respondent's assertions.

I agree with the determination of Arbitrator Watson and find that there is no new or different evidence in the record in the case at issue which would lead to a contrary finding and conclusion.

Under these circumstances, the respondent has established that the applicant is not entitled to reimbursement for the claim at issue.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this 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 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, Anne Malone, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

07/17/2024

(Dated)

Anne Malone

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:
4bb653f79241e6eaf1f0418e0481a252

Electronically Signed

Your name: Anne Malone
Signed on: 07/17/2024