

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Far Rockaway Medical PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-23-1316-8895

Applicant's File No. 804.410

Insurer's Claim File No. 3243L650G

NAIC No. 25178

ARBITRATION AWARD

I, Jeffrey Silber, 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 03/27/2024, 07/11/2024
Declared closed by the arbitrator on 07/11/2024

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

Jenna Pettograsso, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,706.47**, 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 EIP, SA, a 35-year-old male was involved in a motor vehicle accident on December 25, 2022. The EIP sought medical treatment for the injuries sustained in the MVA. Applicant submitted claims for a medical treatment provided from 1/19/23 through 5/18/23. Respondent issued a verification request and claims that the request is still outstanding post EUO. Respondent therefore denied the claim based upon the 120-day rule.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). In this instance, Applicant has established its prima facie case.

Pursuant to Section 5106(a) of the Insurance Law and 11 NYCRR Section 65-3.8(a), an insurer is required pay or deny the claim with 30 calendar days after proof of claim is received.

The 30-day statutory period may be extended by a request by the insurance company for additional verification of the claim, 11 NYCRR Section 65-3.8(a)(1), so long as the request is made within 15 business days of the receipt of the claim. 11 NYCRR Section 65-3.5(b). *Mount Sinai Hospital v. Triboro Coach*, 263 A.D.2d 11, 699 N.Y. S.2d 77 (2nd Dept. 1999).

An insurer is not obligated to pay or deny a claim until it has received verification of all relevant information requested (see 11 NYCRR 11 NYCRR 65-3.8 (b) (3)); *St. Vincent's Hospital Richmond v. American Transit Insurance Company*, 299 A.D.2d 338 (2d Dept. 2002); *New York Hosp. Med. Ctr. of Queens v Country-Wide Ins. Co.*, 295 A.D.2d 583, 744 N.Y.S.2d 201 (2d Dept 2002). "Just as the insurer has a duty to speedily process claims, the claimant for benefits has a duty of cooperation in supplying information reasonably requested by the insurer to process the claim." *Dilon Medical Supply Corp. v. Travelers Ins. Co.*, 7 Misc. 3d 927, 796 N.Y.S.2d 872 (Civ. Ct. Kings Co. 2005) Applicant "cannot simply rest on its laurels and ignore a verification request . . . Since the [Applicant] desires to be paid the onus is on it to insure that the [Respondent] has all of the required information to verify and pay the claim." *D&R Medical Supply, Inc. v. Clarendon Nat. Ins. Co.*, 22 Misc. 3d 1127(a), 881 N.Y.S.2d 362, 2009 Slip Op 50306(U)(Civ. Ct. Kings Co., Feb. 6, 2009). "Any confusion on the part of [an applicant] as to what was being sought should [be] addressed by further communication, not inaction." *Westchester County Medical Center v. New York Central Mut. Ins. Co.*, 262 A.D. 553, 692 N.Y.S.2d 665 (2d Dept 1999). "Even when a claimant believes it need not comply with a verification request, the claimant still has a duty to communicate with the insurer regarding the request. . . The [insurer] should not be put in a position to second guess the reason or reasons why the [claimant] has failed to respond to the request." *Canarsie Chiropractic, P.C. v. State Farm Mut. Auto. Ins. Co.*, 27 Misc.

3d 1228(A), 911 N.Y.S.2d 691 (Civ. Ct. Kings Co. 2010). A failure to raise an objection to the request will even result in a waiver of the defense the notices were defective and unreasonable. *Canarsie Chiropractic, P.C. v. State Farm Mut. Auto. Ins. Co.*, 27 Misc. 3d 1228(A), 911 N.Y.S.2d 691 (Civ. Ct. Kings Co. 2010).

Under the Regulations, "[t]he insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." 11 NYCRR 65-3.5(c). If the insurer does not receive all of the requested verification, it is prohibited from issuing a denial within the first 120 calendar days following the initial request for additional verification. 11 NYCRR 65-3.8(b)(3). If the requested verification is not received in 120 days, Respondent may, but is not required to, deny the claim. The information sought was relevant (inter alia, lease agreements, the status of providers). Each request for further verification contained the 120-day warning language required by the new regulations. Verification is still open.

Respondent requested that a representative from Applicant appear for examinations under oath (EUO). This EUO was ultimately conducted on 1/28/2022 wherein Dr Barakat appeared and testified. Respondent then delayed payment of this bill for post-EUO verification requests it maintains were necessary to verify the claim based on the EUO testimony.

Respondent relies upon its written brief from counsel and further submits an affidavit from Brian McCausland, an SIU Investigator employed by State Farm (Mr. McCausland outlines the basis for State Farm's verification requests), copies of the verification requests, proof of mailing of same, a copy of the EUO transcript relevant to Dr. Barakat testimony taken on January 28, 2022, extensive correspondence between the parties including letters from Rivkin Radler to Tsirelman Law Firm dated February 7, March 15, 2022, a response from Applicant dated June 6, 2022, copies of Applicant's response, and a letter from Rivkin Radler dated June 20, 2022. The June 20 letter outlines what is still missing and the basis for Respondent's demand for same.

Applicant does not challenge the timeliness of the post-EUO verification requests but maintains that it has substantially complied with the verification requests.

In *Burke Physical Therapy, PC v. State Farm Mut. Auto. Ins. Co.*, 2024 NY Slip Op. 24111 (App. Term 2d Dept. 2024), the court found that the tolling provision expired when the EUO was conducted, and proof of claim became complete. See, 11 NYCRR 65-3.8 (a) (1). The court noted that in the case of an EUO or IME, the verification is deemed to have been received by the insurer on the day the examination was performed.

Respondent improperly denied the claim based upon the 120-day rule. Verification was complete on the date of the EUO. No tolling is applied to the bill at issue and the post EUO verification requests are nullities. Thus, the claim was not timely or properly denied based on the 120-day rule.

Applicant is awarded the full amount, plus interest, an attorney's fee and the arbitration filing fee, as outlined in Sections A through D below.

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	Status
	Far Rockaway Medical PC	05/18/23 - 05/18/23	\$407.53	Awarded: \$407.53
	Far Rockaway Medical PC	03/23/23 - 03/23/23	\$407.53	Awarded: \$407.53
	Far Rockaway Medical PC	04/20/23 - 04/20/23	\$407.53	Awarded: \$407.53
	Far Rockaway Medical PC	01/19/23 - 01/19/23	\$483.88	Awarded: \$483.88
Total			\$1,706.47	Awarded: \$1,706.47

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/18/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 9/18/23 (the filing date for this case) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00.

- 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 Kings

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

07/31/2024

(Dated)

Jeffrey Silber

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:
fe1192f69b03e2ee5e51169da59b3a43

Electronically Signed

Your name: Jeffrey Silber
Signed on: 07/31/2024