

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Titan Diagnostic Imaging Services, Inc  
(Applicant)

- and -

Hereford Insurance Company  
(Respondent)

AAA Case No. 17-23-1329-5706

Applicant's File No. TDIS 845.01, 02

Insurer's Claim File No. 97648

NAIC No. 24309

**ARBITRATION AWARD**

I, John Kannengieser, 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 08/01/2024  
Declared closed by the arbitrator on 08/01/2024

Michael J. Lamond from Michael J. Lamond PC participated virtually for the Applicant

Chris Fingerhut from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,201.78**, 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

Applicant seeks payment for health services provided on 12/23/22 following MVA on 3/20/22; not denied by Respondent but delayed due to outstanding verification.

4. Findings, Conclusions, and Basis Therefor

The 41 year old male EIP (SC) was involved in an accident on 3/20/22 and thereafter sought medical treatment for his injuries. The bills in dispute are for cervical, lumbar & joint ultrasounds on 12/23/22 in the total amount of \$2,201.78. Respondent has not denied the bills but has delayed them due to outstanding verification.

Plaintiff established a prima facie case by the submission of statutory forms for proof of claim and the amount of the loss (Park Health Ctr. V. Prudential Prop & Cas. Ins. Co., NYLJ Dec. 14, 2001). The burden then becomes Respondent's to show otherwise. No fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested pursuant to section 65-3.5.

There were no witnesses.

Respondent asserted that it sought additional verification from the Applicant which it never completely received. Specifically, Respondent sought letter of medical necessity from the referring doctor, Glenn Whitney, DC, and the ultrasound films for the areas tested. Respondent acknowledged receipt of the ultrasound reports & spine ultrasound referral.

The legislative intent of the no-fault regulation "demonstrates an interest in prompt resolution of reimbursement claims, a desire to avoid litigation, and statutory consequences on an insurer to incentivize it to seek verification of a claim, deny it, or pay. No-fault reform was enacted to provide prompt uncontested, first-party insurance benefits. That is part of the price paid to eliminate common-law contested lawsuits.... The tradeoff of the no-fault reform still allows carriers to contest ill-founded, illegitimate and fraudulent claims, but within a strict, short-leashed contestable period and process designed to avoid prejudice and red-tape dilatory practices." *See Viviane Etienne Medical Care, P.C. v. Country Wide Ins. Co.*, 25 N.Y.3d 498 (2015), citing *Presbyterian Hospital in the City of N.Y. v. Maryland Cas. Co.*, 90 N.Y.2d 274 (1997).

11 NYCRR 65-3.5 (c) mandates that the insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested. The insurer has 15 business days from the date it receives the prescribed verification forms to seek additional verification from an Applicant. *See* 11 NYCRR 65-3.5 (b). Thereafter, "at a minimum, if any requested verification has not been supplied to the insurer 30 calendar days after the original request, 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. At the same time the insurer shall inform the applicant and such person's attorney of the reason(s) why the claim is delayed by identifying in writing the missing verification and the party from whom it was requested." *See*, 11 NYCRR 65-3.6 (b).

On 2/8/23, Respondent received a bill for date of service 12/23/22 in the amount of \$1,246.57 for services rendered by Titan Diagnostic Imaging Services, Inc. Respondent issued timely additional verification request letters with proof of mailing on 2/15/23 and again on 3/20/23. Applicant supplied medical records and stated they are not in

possession of the requested letter and the ultrasound films by fax letters dated 6/22/23 and 12/11/23. In response to receipt of these letters, Respondent thereafter issued Missing/Incomplete verification request letters with proof of mailing on 7/21/23 and 1/5/24.

On 2/8/23 Respondent received a bill for date of service 12/23/22 in the amount of \$955.21 also for services rendered by Applicant and issued additional timely verification request letters with proof of mailing on 2/15/23 and 3/20/23. Applicant supplied medical records and stated they are not in possession of the requested letter and the ultrasound films by fax letters dated 6/22/23 and 12/11/23. In response to receipt of these letters, Respondent thereafter issued Missing/Incomplete verification request letters with proof of mailing on 7/21/23 and 1/5/24.

All of the verification letters were cc'd to Dr. Whitney.

Respondent argues that as of the date of Respondent's submission the requested verification remains outstanding and therefore, this matter is not ripe for arbitration and should be dismissed.

The Applicant herein is the Imaging provider, and I find that their response of not being in possession of the letter of medical necessity and especially of the ultrasound films to be inadequate. Applicant is entitled to this requested verification.

Accordingly, I find that there remains outstanding verification as to these claims and the matter is therefore premature for arbitration and is dismissed without prejudice.

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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Nassau

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

08/22/2024

(Dated)

John Kannengieser

### **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:**  
1a37ea8caf14b5de516bf1cda6ccc5ea

### Electronically Signed

Your name: John Kannengieser  
Signed on: 08/22/2024