American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Noah Godwin MD (Applicant)	AAA Case No.	17-24-1340-0492
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	52-56G7-09B
	NAIC No.	25178
State Farm Fire & Casualty Company (Respondent)		

ARBITRATION AWARD

I, Amanda R. Kronin, 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: NF

1. Hearing(s) held on 08/23/2024
   Declared closed by the arbitrator on 08/23/2024

   Robin Grumet, Esq from Law Offices of Hillary Blumenthal LLC (Union City) participated virtually for the Applicant

   Crystal Taylor, Esq from Goldberg, Miller and Rubin, P.C. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$397.33**, 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 Assignor, NF, is a 39 year old female driver of a motor vehicle which was involved in an accident on 9/12/23. Following the accident, Assignor suffered injuries which resulted in the Assignor seeking treatment. On 10/12/23, the Assignor underwent treatment. Respondent denied the claim based on material misrepresentation. The issue to be decided is whether Respondent's material misrepresentation defense can be sustained.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

A health care provider Applicant establishes its prima facie entitlement to No-Fault benefits by submitting proof that its claim, on the statutory billing form, was mailed and received by the insurance company and that payment is overdue. Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y. 3d 498, 14 N.Y.S. 3d 283 (2015). Once Applicant has established a prima facie case, and in order to rebut the presumption of medical necessity, the burden then shifts to insurer-Respondent to present sufficient evidence to establish a lack of medical necessity for the services rendered. The insurer bears the burden of production. Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 13 Misc. 3d 136(A), 831 N.Y.S.2d 351(Table)(App. Term 1st Dept. 2006).

In support of its position, Applicant submitted a claim in the amount of $397.33 for the treatment at issue. Respondent's submission contains a Summons and Complaint for a Declaratory Judgement. Respondent argued at the hearing that the present matter should be continued pending the declaratory judgment. A "Supreme Court judgment is a conclusive final determination, notwithstanding that it was entered on the default of the plaintiff, since res judicata applies to a judgment taken by default that has not been vacated". See Trisingh Enters., Inc v. Kessler, 249 AD2d 45, 671 NYS 2d 70 (App Div, 1st Dept-1998) and Robbins v. Growney, 229 AD2d 356, 645 NYS 2d 791 (App Div, 1st Dept-1996). However, Respondent does not establish there has been a final determination, in the form of an order, default judgment or otherwise, or that a stay of arbitration has been issued in that action, that has a preclusive impact as a matter of law on this arbitration. Thus, I shall hear the cases and render my decision.

TRespondent must demonstrate that its initial and follow-up requests for verification were timely issued pursuant to 11 NYCRR Section 65-3.5(b) and 65-3.6(b) and establish that the assignor failed to appear at the EUOs. Essential Acupuncture Services, P.C. v. Ameriprise Auto & Home Ins. Co., 2012 N.Y. Slip Op. 52404(U) (App. Term 2 , 11 and 13 Jud. Dists. 2012); Urban Radiology, P.C. v. Clarendon National Insurance Company, 31 Misc.3d 132(A), 2011 N.Y. Slip Op. 50601(U) (App. Term 2 , 11 and 13 Jud Dists. 2011); , 23 Misc.3d 141(A), 2009 N.Y. Slip Op. 51023(U) (App. Term 2 , 11 and 13 Jud. Dists. 2009).

While an EUO does not have to be scheduled to be held within 30 days after the insurer's receipt of the claim form, see St. Vincent Medical Care, P.C. v. Travelers Insurance Company, 26 Misc.3d 144(A), 2010 N.Y. Slip Op. 50446(U) (App. Term 2 , 11 and 13 Jud. Dists. 2010); Eagle Surgical Supply, Inc. v. Progressive Casualty Insurance Co., 21 Misc.3d 49, 2008 N.Y. Slip Op. 28432 (App. Term Second Dept. 2008), the EUO scheduling letter must comport with the time restrictions set forth in the verification protocols, to wit, **they must be sent within 15 days from the insurer's receipt of the claim form**. (emphasis added) See, National Liability & Fire Insurance Company v. Tam Medical Supply Corp, 131 A.D.3d 851, 16 N.Y.S.3d 457 (1 Dept. 2015); Quality Psychological Services, P.C. v. Utica Mutual Insurance Company, 38 Misc.3d 136(A), 2013 N.Y. Slip Op. 50148(U) (App. Term 1 Dept. 2013); Optimal Well-Being Chiropractic, P.C. v. Ameripise Auto & Home, 40 Misc.3d 129(A), 2013 N.Y. Slip Op. 51106(U) (App. Term 2, 11 and 13 Jud. Dists. 2013); Boris Tsatskis, M.D. v. State Farm Fire and Casualty Company, 36 Misc.3d 129(A), 2012 N.Y. Slip Op. 51268(U) (App. Term 2, 11 and 13 Jud. Dists. 2012); Arco Medical New York, P.C v. Lancer Insurance Company, 34 Misc.3d 134(A), 2011 N.Y. Slip Op. 52382(U) (App. Term 2, 11 and 13 Jud. Dists. 2011).

In Neptune Med. v Ameriprise, 2015 NY Slip Op 51220 [App. Term, Second Dept.], the court stated that timely delays for other additional verification did not grant the insurer an opportunity to make EUO requests that would otherwise be untimely. "Pursuant to the NoFault

Regulations, "any additional verification required by the insurer to establish proof of claim **shall be requested within 15 business days of receipt of the [NF3]**" (11 NYCRR 653.5 [b] [emphasis added]). Defendant did not request that plaintiff appear for an EUO until more than 15 business days, and even more than 30 calendar days (see generally 11 NYCRR 653.8 [l] [providing that deviations from the verification time frames reduce the 30 days to pay or deny the claim by the same number of days that the request was late]), after it had received the bills at issue. Thus, even if the EUO scheduling letters were timely with respect to any other pending claims which may exist but are not before us, they were untimely with respect to the bills at issue. Indeed, this would be true even if defendant had tolled the 30 day period within which it was required to pay or deny the bills at issue, by timely requesting verification pursuant to 11 NYCRR 653.8 (a), as the Regulations do not provide that such a toll grants an insurer additional opportunities to make requests for verification that would otherwise be untimely. Consequently, the EUO scheduling letters were nullities with respect to the bills at issue and, therefore, defendant's motion for summary judgment was properly denied." (see O & M Med., P.C. v Travelers Indem. Co., 47 Misc 3d 134[A], 2015 NY Slip Op 50476[U] [App Term, 2d, 11th & 13th Jud Dists 2015]).

Based on my review of the record, the parties' briefs and the existing pertinent case law and regulations referenced herein, I am constrained to find that respondent's EUO requests were untimely and nullities with respect to the bills in issue. As such, I cannot consider whether the alleged failure to appear at the EUOs would vitiate coverage.

The Appellate Term, Second Department has specifically held that the material misrepresentation defense requires a timely denial. In Compas Medical, P.C. v. Praetorian Ins. Co.,52 Misc3d 132(A), NY Slip Op 51000(U) (2016), the Court held: [D]efendant failed to establish that it had timely mailed letters scheduling plaintiff's assignor's examination under oath (see St. Vincent's Hosp. of Richmond v. Government Empls. Ins. Co., 50 AD3d 1123 [2008]); therefore, defendant failed to demonstrate, as a matter of law, that it

had tolled its time to deny those claims on the proffered ground of fraudulent procurement of the insurance policy (see Great Health Care Chiropractic, P.C. v. Hanover Ins. Co., 42 Misc.3d 147[A], 2014 N.Y. Slip Op 50359[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2014]).

As such, I find that the defense of material misrepresentation in procuring the insurance policy was not raised in a timely denial and cannot be raised now.

Thus I find that the Applicant is entitled to an Award in the amount of $397.33. 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
	Noah Godwin MD	**10/12/23 - 10/12/23**	**$397.33**	**Awarded: $397.33**
Total			**$397.33**	**Awarded: $397.33**

B. The insurer shall also compute and pay the applicant interest set forth below. 03/13/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first- party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of $1,360." 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 Suffolk

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

08/25/2024
(Dated)

Amanda R. Kronin

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:
868eba792e0b2c1e2b66945e5b36bc37

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 08/25/2024