

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rashbi Diagnostics Imaging Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1295-6678
Applicant's File No.	174.798
Insurer's Claim File No.	8723169890000002
NAIC No.	22063

ARBITRATION AWARD

I, Patricia Daugherty, 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 08/09/2024
Declared closed by the arbitrator on 08/09/2024

Allen Tsirelman from Tsirelman Law Firm PLLC participated virtually for the Applicant

Domenick Pesce from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,383.18**, 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

Assignor, "RL, a 48-year-old male driver," was involved in a motor vehicle accident on December 3, 2022. At issue in this case is a claim in the amount of \$1,383.18 for the technical component of MRIs of the cervical and lumbar spine performed on January 17, 2023. Respondent argues that this matter was prematurely filed prior to Respondent receiving additional verification of the claim. The issue to be determined is whether the claim was prematurely filed.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

It is well settled that an applicant establishes its prima facie entitlement to payment by proving it submitted a claim setting forth the facts and the amount of the loss sustained and that payment of no fault benefits were overdue (see Insurance Law § 5106[a]; Viviane Etienne Med. Care v Country-Wide Ins. Co., 25 NY3d 498, 501 (2015); Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564 (2nd Dept., 2004).

It is also well settled that an insurer must pay or deny a claim within thirty days of receiving proof of claim. Insurance Law § 5106 [a]; 11 NYCRR 65-3.8(a). Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co., 90 NY2d 274 (1997). An insurer may extend the thirty-day period through the verification procedures set forth in 11 NYCRR 65-3.5. Failure to comply with or extend the thirty-day period results in the preclusion of most defenses, including medical necessity. Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co.; Vista Surgical Supplies v. State Farm Mut. Ins. Co., 14 Misc. 3d 135(A) (App Term, 2nd and 11th Jud. Dists. 2007). The narrow exceptions to the preclusion rule apply to lack of coverage and fraud defenses. See Central Gen. Hosp. v Chubb Group of Ins. Cos., 90 NY2d 195(1997); Matter of Metro Med. Diagnostics v Eagle Ins. Co., 293 AD2d 751 (2002).

The record reflects that Applicant submitted its bill to Respondent via fax on February 6, 2023. The record reflects that Respondent received two fax transmissions for the same bill, with the first fax transmission received at 5:55 pm and the second at 9:07 pm. Through correspondence dated February 15, 2023, Respondent delayed the first bill received pending additional verification in the form of an examination under oath (EUO) scheduled to take place on March 9, 2023. The EUO was held on March 9, 2023. Respondent then issued post EUO verification requests dated March 22, 2023. Applicant filed the AR-1 on April 18, 2023. On February 16, 2023 Respondent denied the second bill as a duplicate.

Applicant argued that Respondent's post-EUO verification requests did not serve to further toll Respondent's time to pay or deny the claim and verification should have been deemed complete as of March 9, 2023.

Respondent argued that the information requested in the post-EUO requests mirrored the information also requested in the EUO scheduling letters and therefore the bills were properly delayed pending this information.

The EUO scheduling letters contain the following language:

For purposes of the EUO, we will need you to produce and provide to Rivkin Radler, LLP, at the address listed above, no later than seven days prior to the scheduled date, the documents identified below:

1. Sign in sheets, treatment notes, evaluation and re-evaluation reports, and referrals from other healthcare providers, to the extent not already provided;

1. Documents evidencing ownership of Rashbi Diagnostics at the time of treatment for which you seek payment, by one or more licensed professionals, including but not limited to a copy of the certification of incorporation, receipts for filing, stock certificates and the stock ledger for the professional corporation;

2. A list of the individuals who provide healthcare services on behalf of Rashbi Diagnostics licensing documentation for those individuals, and documents identifying the relationship between each individual and Rashbi Diagnostics (i.e., W-2s, 1099s, and/or K-1s);

3. Documents relating to the income and expenses of Rashbi Diagnostics, including but not limited to payroll tax returns, corporate tax returns, financial statements, general ledgers, and bank statements for the past eighteen months; and

4. Documents, contracts, and agreements (including proofs of payment thereunder) relating to the relationship between Rashbi Diagnostics and any entity or individual that (i) leases space and/or equipment to or from Rashbi Diagnostics or (ii) provides management, consulting, administrative, mailing, billing, or collection services to Rashbi Diagnostics.

Respondent's post EUO requests seek the following:

1. Lease agreement to which Rashbi Diagnostics is a party and proof of each payment Rashbi Diagnostics made thereunder regarding the location, 253-02 Rockaway Boulevard, Rosedale, New York 11422, at which Rashbi Diagnostics purportedly rendered services during the time period of July 2022 through the present;

2. Documents relating to the income and expenses of Rashbi Diagnostics, such as bank statements from Rashbi Diagnostics' corporate TD Bank account including deposit and withdrawal logs from July 2022 through the present, cancelled checks (front and back) that evince payments from this account, and corporate tax returns (including quarterly reports);

3. A complete list of all the employees who are employed with Rashbi Diagnostics, and who provide or who have provided services on behalf of Rashbi Diagnostics, documents identifying the relationship between each individual and Rashbi Diagnostics (i.e. W-2s, 1099s, and/or K-1s);

4. Licensing and certification documentation for all radiologists and radiology technicians employed by Rashbi Diagnostics;
5. Documentation identifying the make and model of the MRI and X-Ray machines used by Rashbi Diagnostics employees to perform MRIs and X-Rays, and any contracts, invoices, and purchase agreements evincing acquisition of these items by Rashbi Diagnostics and Rashbi Ventures LLC;
6. Copy or copies of the service agreement with Hitachi and/or Fujifilm, the company responsible for servicing and maintaining the MRI and X-Ray machines used by Rashbi Diagnostics;
7. Documentation that establishes the accreditation of Rashbi Diagnostics with the Intersocietal Accreditation Commission and/or the American College of Radiology; and
8. Any written partnership contract with co-owners Artur Kofman, David Modnyy, and Elchin Rafailov.

After a thorough review of the record, I find that Respondent's post-EUO verification requests failed to further toll Respondent's time to pay or deny Applicant's claim. Foremost, the documentation sought for the purposes of conducting the EUO is not identical information sought post-EUO. Second, the EUO scheduling letters specifically state that the 4 items requested therein were needed to be produced no later than seven days prior to the scheduled date *for the purposes of the EUO* (emphasis added). The verification request itself pertains to the EUO and pursuant to 11 NYCRR 65-3.8(a) "[i]n the case of an examination under oath or a medical examination, the verification is deemed to have been received by the insurer on the day the examination was performed." The Regulations are clear that when the additional verification sought is an EUO, the verification is deemed received the day the EUO took place. See Burke Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co., 2024 N.Y. Slip Op. 24111 (N.Y. App Term 2024).

Respondent had until April 8, 2023 to pay or deny the bill. The bill became overdue on April 9, 2023.

Based on the foregoing, Applicant's claim is granted.

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
	Rashbi Diagnostics Imaging Inc	01/17/23 - 01/17/23	\$1,383.18	Awarded: \$1,383.18
Total			\$1,383.18	Awarded: \$1,383.18

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/09/2023 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. A claim is overdue when it is not paid within 30 days after an insurer receives proof of claim. (Insurance Law §5106[a];11 NYCRR 65-3.8(a)(1). All overdue benefits shall bear interest 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(c).

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee, in accordance with 11 NYCRR §65-4.6. Therefore, the insurer shall pay the applicant an attorney's fee of 20% of benefits plus interest, with no minimum fee and a maximum fee of \$1,360.00.

- 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 Suffolk

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

09/07/2024
(Dated)

Patricia Daugherty

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:
8cf68b70333b2d2aef3c97ff7a5d3e11

Electronically Signed

Your name: Patricia Daugherty
Signed on: 09/07/2024