

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Star Medical Diagnostic, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1336-2729
Applicant's File No.	M07791
Insurer's Claim File No.	0325801740101078
NAIC No.	35882

ARBITRATION AWARD

I, Joseph Endzweig, 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 09/17/2024
Declared closed by the arbitrator on 09/17/2024

Amisha Velasquez, Esq. from Munawar Law Firm, PLLC participated virtually for the Applicant

Samantha Bibbo, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$966.54**, 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

This arbitration arises out of treatment of a 57 year old female for injuries sustained in a motor vehicle accident occurring on 4/22/23. Applicant seeks reimbursement for a left knee MRI performed on 8/11/23 and billed at \$966.54. Reimbursement was denied based on the 120 day rule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the hearing.

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Respondent received Applicant's bill on 9/18/23. By letters dated 10/12/23 and 11/16/23 Respondent requested additional verification from Applicant. Specifically, Respondent's letters stated the following:

To verify the claims listed in STAR MEDICAL DIAGNOSTIC PC 20231011-0005, GEICO requires the production of the following documentation/information:

(1) Lease agreement to which Star Medical is a party and proof of each payment Star Medical made thereunder regarding the location, 234-28A Merrick Blvd, Rosedale NY, 11422, at which Star Medical purportedly rendered services during the time period of April 2021 through the present;

GEICO acknowledges that Star Medical provided a lease agreement and proof of payment from May 2022 to November 2022 but did not provide proof of payment for the time period of April 2021 through April 2022.

(2) Purchase contract or agreement to which Star Medical is a party and proof of payment regarding the location, 234 West Merrick Rd. Valley Stream, NY 11580, at which Star Medical purportedly rendered services during the time period of February 2020 through the present;

GEICO acknowledges that Star Medical provided a lease agreement between PRQ Properties LLC and Star Medical and proof of payment from April 2022 through September 2022 but did not provide proof of payment for the time period of April 2020 through April 2022 or a purchase agreement as testified to by Dr. Qureshi (page 32, line 7).

(3) Documents relating to the income and expenses of Star Medical, such as bank statements from Star Medical's corporate Chase bank account including deposit and withdrawal logs from January 1, 2020 through the present, cancelled checks (front and back) that evince payments from this account, and corporate tax returns (including quarterly reports);

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

GEICO acknowledges that Star Medical previously provided a complete list of all employees but indicated that Star Medical is not in possession of W-2s, 1099s, or K-1s for 2022. However, Dr. Qureshi testified that many employees have been employed with Star Medical since 2021 (page 48, line 22) (page 55, line 11), (page 56, line 17) (page 57, line 7) (page 60, line 4) (page 63, line 6). Accordingly, GEICO reiterates its demand for the documents previously requested as part of item #4.

Star Medical must comply with this verification request by providing all of the requested verification under your control or possession within 120 calendar days of our original request or by providing written proof providing reasonable justification for its failure to comply with this verification request. Otherwise, GEICO may deny the claims subject to this verification request.

Applicant responded to the verification requests by letter dated 1/11/24. which was served by fax.. Applicant's response stated:

We have received your duplicative verification request for post EUO verification. Our attorneys have already provided responses to your request on December 19, 2022 and January 10, 2023. No further information will be provided as the remaining items sought are unreasonable and irrelevant to the claims listed above and will not be provided.

Through counsel, we have objected to the production of the documentation requested on the grounds that the information is either: (a) not in the possession or control of Star Medical Diagnostic pc, or (b) not necessary to verify the claims at issue. As you are aware, a significant number of arbitrators have held that the Applicant is not required to provide the requested documentation as it is either (a) not in the possession or control of Star Medical Diagnostic pc or (b) not necessary to verify the claims at issue.

While the regulations give insurance carriers the ability to request additional documentation to verify a claim, the scope of the verification sought is not indefinite. "The regulations do not give the insurer the right to ask an assignee to produce documents relating to the corporate structure or finances of a medical provider. Upon receipt of the completed verification form, the insurer can request additional verification. The regulations only permit the insurer to obtain written information to verify a claim." See *Dynamic Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co.*, 2010 Slip Op 20285 (Dist. Ct. Nassau Co. July 15, 2010); See also, *Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co.*, 33 Misc. 3d 1236(A), 941 N.Y.S.2d 536, 2011 N.Y. Slip Op. 52255(0) at 3 (Dist. Ct. Nassau Co. 2011) ("The demand for information relating to a Mallela defense is not obtainable through verification."); *Island Chiropractic Testing, P.C. v. Nationwide Ins. Co.*, 35 Misc. 3d 1235(A), 953 N.Y.S.2d 550 (Dist. Ct. Suffolk Co., C. 2012) ("Permitting an insurer to obtain written documents such as tax returns, incorporation agreements or leases regarding a potential fraudulent incorporation 'Malella' defense as part of the verification process defeats the stated policy and purpose of the no-fault law and carries with it the

potential for abuse.") An insurer must demonstrate "a fact or founded belief" that the provider is a fraudulent corporation to allow a special circumstance to exist, entitling the insurer to the provider's financial documents including corporate tax returns. *Midborough Acupuncture P.C. v. State Farm Ins. Co.*, 21 Misc.3d. 10, 12 (App. Term, 2nd Dept. 2008).

In *Matter of Choi Acupuncture, P.C. and Geico Ins. Co.*, 17-18-1112-7879 (2021), Arbitrator Berdnik held that Applicant substantially complied to Respondent's verification requests, even though Applicant objected to producing: (1) agreements and proof of payment regarding leased space and/or medical equipment; (2) invoices for management, consulting, administrative, marketing, billing or collection services; (3) a copy of the provider's healthcare licenses and registrations, and (4) documentation relating to the income and expenses of the provider. The arbitrator held that, because Respondent failed to establish that Applicant's behavior was tantamount to fraud, there were no "special circumstances" requiring Applicant's disclosure of the requested financial documents. *Id.*

Thank you for your consideration,

There was no further correspondence from Respondent regarding the verification requests. Respondent did not acknowledge receipt of Applicant's 1/11/24 response letter or reply to the letter in any manner. Respondent does not deny receipt of the faxed response letter.

I note that this arbitration involves an ongoing dispute between Applicant and Respondent regarding the verification of Applicant's claims. Applicant, by its owner, testified at an EUO on November 18, 2022. Applicant has submitted numerous documents in response to the prior verification requests of the Respondent. I further note that the 120-day rule is claim specific and requires an insurer to take appropriate action upon receipt of each and every claim.

The response to a verification request that is "arguably responsive" places the burden to take further action upon the carrier. *All Health Medical Care, PC v. Geico*, 2 Misc 3d 907 (NY Civ. Ct., 2004); *Media Neurology, PC v. Countrywide Ins. Co.*, 21 Misc 3d 1101 (NY Civ. Ct., 2005). Moreover, as long as Applicant's documentation is arguably responsive to an insurer's verification request, the insurer must act affirmatively once it receives a response to its verification request. *Media Neurology P.C. v. Countrywide, Ins. Co.*, 21 Misc.3d 1101 (NY City Civ. Ct.2005). I find that Applicant's response to Respondent's verification requests placed the burden to take further action upon the carrier. Respondent's failure to acknowledge or take any action upon receipt of Applicant's 1/11/24 response to the verification requests violates its obligation to act affirmatively once it receives responses to its requests.

In view of the foregoing, Respondent's 120 day defense cannot be sustained. I find that the Applicant did not fail to provide the requested verification and/or did not fail to provide reasonable justification for its failure to provide the requested verification within the 120 day period.

Accordingly, I find in favor of the Applicant and award the sum of \$966.54.

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
	Star Medical Diagnostic, PC	08/11/23 - 08/11/23	\$966.54	Awarded: \$966.54
Total			\$966.54	Awarded: \$966.54

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/13/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall run from the date the request for arbitration was received by the AAA.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 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 Westchester

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

09/18/2024
(Dated)

Joseph Endzweig

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:
4aa67623e82ba54979e99cca2d20a7ac

Electronically Signed

Your name: Joseph Endzweig
Signed on: 09/18/2024