American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Queens Radiology Imaging PC (Applicant)	AAA Case No.	17-24-1333-8959
	Applicant's File No.	SSA24-111620
- and -	Insurer's Claim File No.	0272609120000001
	NAIC No.	35882
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Eileen Hennessy, 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-J.H.

1. Hearing(s) held on 08/21/2024
   Declared closed by the arbitrator on 08/21/2024

   Steven Super from Super Associates P.C. participated virtually for the Applicant

   Edwin A. Maldonado from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,903.98**, 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 record reveals that Assignor-J.H., an 84-year-old male, claimed injuries as the driver of a motor vehicle involved in an accident that occurred on 8/31/2023. Applicant billed for MRIs of the cervical spine, lumbar spine, left shoulder, and left knee conducted from 11/2/2023 through 11/9/2023. Respondent requested verification of the claim. The issue for determination is whether this arbitration was filed prematurely?

4. Findings, Conclusions, and Basis Therefor

   Applicant seeks reimbursement forMRIs of the cervical spine, lumbar spine, left shoulder, and left knee. This hearing was conducted using the documents contained in

the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing held via Zoom.

In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

Legal Framework - Tolling of claims

The general rule regarding payment of claims is set forth in 11 NYCRR §65-3.8(c), which states that "within 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part." 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 11 NYCRR §65-3.5. 11 NYCRR §65-3.8(a). As such, a claim need not be paid or denied until all demanded verification is provided. *See* Nyack Hospital v. General Motors Acceptance Corp., 27 A.D.3d 96, 808 N.Y.S.2d 399 (2d Dept. 2005), *mod'd on other*, 8 N.Y.3d 294, 832 N.Y.S.2d 880 (2007).

OUTSTANDING VERIFICATION

Legal Standard

Once Applicant establishes its prima facie case, the burden of proof shifts to Respondent to come forward with admissible evidence demonstrating the existence of a material issue of fact. Amaze Medical Supply Inc. v. Eagle Ins. Co., 2 Misc.3d 128(A), 2003 N.Y. Slip Op. 51701(U)(App. Term, 2 Dept, 2 & 11 Jud Dists., 2003).

11 NYCRR §65-3.5(b), Claim procedure states: "Subsequent to the receipt of one or more of the completed verification forms, any additional verification required by the insurer to establish proof of claim shall be requested within 15 business days of receipt of the prescribed verification forms. Any requests by an insurer for additional verification need not be made on any prescribed or particular form."

11 NYCRR §65-3.6(b), Verification requests states:"At a minimum, if any requested verifications 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".

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.

Further, 11 NYCRR §65-3.8(l) states:

> For the purposes of counting the 30 calendar days after proof of claim, wherein the claim becomes overdue pursuant to section 5106 of the Insurance Law, with the exception of section 65-3.6 of this subpart, any deviation from the rules set out in this section shall reduce the 30 calendar days allowed.

Thus, a request for additional verification pursuant to 11 NYCRR §65-3.5(b) that is sent beyond the 15 business days is still valid so long as it is issued within 30 days from receipt of the claim; such a deviation will simply reduce the insurer's time to pay or deny by the same number of days. 11 NYCRR §65-3.8(l). *See* Nyack Hosp. v. General Motors Acceptance Corp., 8 NY3d 294, 2007 NY Slip Op 02439 (Court of Appeals, 2007).

The obligation to pay or deny a claim is not triggered until the insurer has received all of the relevant information that was requested. Hospital for Joint Diseases v. State Farm Mut. Auto. Ins. Co., 8 AD3d 533, 2004 NY Slip Op 05413 (App. Div., 2 Dept., 2004).

In addition to the above, the Fourth Amendment to 11 NYCRR 65-3, which is applicable to claims for medical services rendered on or after April 1, 2013, introduced a provision ([§65-3.5(o)] that sets a time frame for an applicant to respond to an insurer's verification request(s). In pertinent part, the provision states the following:

> An Applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. The insurer shall advise the applicant in the verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. 11 NYCRR §65-3.5(o).

In relation to this new provision, 11 NYCRR §65-3.8(b)(3) was amended so as to confer upon the insurer the right to deny a claim for non-compliance with §65-3.5(o). In pertinent part, the amendment to §65-3.8(b)(3) states the following:

> [A]n insurer may issue a denial if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply, provided that the verification request so advised the applicant as required in section 65-3.5(o)…

Analysis

This case involves an ongoing dispute between Applicant and Respondent regarding verification requests.

Applicant's owner Joseph Izzo appeared for an EUO on 5/11/2023.

According to Respondent, Mr. Izzo's testimony confirmed Respondent's basis for requesting an EUO and further necessitated Respondent's request for further documentation to verify Applicant's claims.

As a result of the EUO, Respondent issued additional post-EUO verification requests to verify the claim dated 5/18/2023 and 6/21/2023, which requested the following:

> *a) Lease Documents evidencing ownership of Queens Radiology at the time of treatment during which you seek payment, including, but not limited to, a copy of the certificate of incorporation, receipts for filing, stock certificates, and the stock ledger for the professional corporation;*
>
> *b) Written agreements and proofs of payment, including lease agreements to which Queens Radiology is a party, including, but not limited to any agreements with AZ Healthcare and Dr. Paul Lerner, as well as proof of payment made by Queens Radiology thereunder regarding the locations where it purportedly renders services during the time period of April 2022 through the present;*
>
> *c) Documents relating to the income and expenses of Queens Radiology, such as bank statements, deposit and withdrawal logs, cancelled checks (front and back) that evince payments from Queens Radiology's accounts, commercial lines of credit, and corporate tax returns (including quarterly reports) from April 2022 through the present;*
>
> *d) Employment agreements and proof of compensation for medical employees, nonmedical employees, and independent contractors providing services on behalf of Queens Radiology, including, but not limited to Naiyer Imam, Ronald Beauge, and Mirza Pollenge from April, 2022 to present;*
>
> *e) All W-2, 1099, and/or K-1 forms for Queens Radiology medical and non-medical employees/personnel, including, but not limited to Naiyer Imam and Dinushi Weerakoon, as well as any documentation regarding employee status or relationship of any Queens Radiology employee/personnel from April 2022 to present;*

f) Licensing and certification documentation for all radiologists and radiology technicians performing services on behalf of Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement;

g) Documentation identifying the make, model, and serial number of the MRI machine used by Queens Radiology to perform MRIs on those claims submitted to GEICO for reimbursement, as well as any contracts, invoices, service agreements, and rental/purchase agreements evincing rental and/or acquisition of these items by Queens Radiology;

h) List of referring providers kept and maintained by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement;

i) Patient scheduling records kept and maintained by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement;

j) Copies of the signed MRI referral forms received from medical providers by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement, including assignor Hugh Williams; and

k) Documentation, to the extent it exists, that establishes the accreditation of Queens Radiology with the Intersocietal Accreditation Commission and/or the American College of Radiology.

According to Respondent's brief, "By letter dated September 1, 2023, GEICO received a portion of the documents from Applicant. However, Applicant failed to provide all of the post-EUO verification that GEICO timely demanded. Accordingly, by letter dated September 11, 2023, GEICO through Rivkin, responded to Applicant and advised that the documents provided were wholly unresponsive to GEICO's requests and that the following verification remained outstanding":

a. Documents evidencing ownership of Queens Radiology at the time of treatment during which you seek payment, including, but not limited to, a copy of the certificate of incorporation, receipts for filing, stock certificates, and the stock ledger for the professional corporation;

b. Written agreements and proofs of payment, including lease agreements to which Queens Radiology is a party, including, but not limited to any agreements with AZ Healthcare and Dr. Paul Lerner, as well as proof of payment made by Queens Radiology thereunder regarding the locations where it purportedly renders services during the time period of April 2022 through the present;

GEICO acknowledges receipt of a lease agreement between Queens Radiology and AZ Healthcare. However, no proofs of payment were provided. Dr. Izzo testified Queens Radiology pays AZ Healthcare approximately $14,000 monthly in rent (p. 44: l. 23-p. 45: l. 9).

c. Documents relating to the income and expenses of Queens Radiology, such as bank statements, deposit and withdrawal logs, cancelled checks (front and back) that evince payments from Queens Radiology's accounts, commercial lines of credit, and corporate tax returns (including quarterly reports) from April 2022 through the present;

GEICO acknowledges receipt of what appears to be a signature page for a Chase business signature credit card and an agreement between Queens Radiology and Pulse Working Capital Solutions for a commercial line of credit. However, the remainder of this request remains outstanding.

d. Employment agreements and proof of compensation for medical employees, nonmedical employees, and independent contractors providing services on behalf of Queens Radiology, including, but not limited to Naiyer Imam, Ronald Beauge, and Mirza Pollenge from April, 2022 to present;

GEICO acknowledges receipt of two direct deposit vouchers, each for April 2023, pertaining to Naiyer Imam. However, the remainder of this request remains outstanding.

e. All W-2, 1099, and/or K-1 forms for Queens Radiology medical and non-medical employees/personnel, including, but not limited to Naiyer Imam and Dinushi Weerakoon, as well as any documentation regarding employee status or relationship of any Queens Radiology employee/personnel from April 2022 to present;

f. Licensing and certification documentation for all radiologists and radiology technicians performing services on behalf of Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement;

Licensing and certification documentation for Provider's Radiology technicians were not provided.

g. Documentation identifying the make, model, and serial number of the MRI machine used by Queens Radiology to perform MRIs on those claims submitted to GEICO for reimbursement, as well as any

contracts, invoices, service agreements, and rental/purchase agreements evincing rental and/or acquisition of these items by Queens Radiology;

Queens Radiology's service agreement with Hitachi was not provided. Dr. Izzo testified that such an agreement exists. See EUO transcript at pg. 154: l. 19 - p.154.

h. List of referring providers kept and maintained by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement;

Dr. Izzo testified that Provider keeps a list of referring doctors that send patients. See EUO transcript at page 153: l. 19. GEICO renews its request.

i. Patient scheduling records kept and maintained by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement; and

Provider's representation that it does not archive scheduling records is contrary to Dr. Izzo's testimony that such a record is created and maintained by Provider's secretaries. See EUO transcript at page 78-79. GEICO renews its request.

j. Copies of the signed MRI referral forms received from medical providers by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement, including assignor Hugh Williams.

The claim in dispute was not subject to the EUO. Pertaining to the specific bills in dispute, Respondent relies on its initial and follow-up post-EUO verification requests, dated 11/27/2023, 12/18/2023, and 12/19/2023, issued to Applicant, which reiterate the requests outlined in Respondent's correspondence, dated 9/11/2023, as well as requesting claim specific verification.

Applicant argues that Respondent submitted untimely proof of mailing of the verification requests, which should not be considered. Specifically, Respondent submitted an affidavit of Paul Clay, dated 8/15/2024, General Manager of the pre-sort facility, in support of the mailing of the verification requests. Specific proof of mailing of a document is not required unless there was some admissible proof by the adversary that a particular document that was alleged to have been mailed was not actually received, which is not the case here. I find that the initial and follow-up verification letters are properly addressed and mailed to the Applicant and Applicant's attorney. *See Lenox Hill Hospital (NSUH) and American Transit Ins. Co.*, AAA Assessment No.: 99-21-1198-8650, [3/16/2022] and*Custom RX Pharmacy LLC andAllstate Insurance Company,*AAA Assessment No.: 99-20-1166-2671, [1/26/2022].

It is within the broad powers of the arbitrator to consider and weigh the factual evidence. Moreover, an award is not arbitrary capricious if the arbitrator reviews all the evidence and is not "clearly violative of strong public policy","totally irrational", and does not "manifestly exceed a specific enumerated limitation on the arbitrator's power". *See* Matter of Erin Constr & Dev. Co., Inc., v. Meltzer, 58 Ad.3d 729.

Applicant does not dispute that they did not directly respond to these specific verification requests for this claim on the date Applicant commenced this arbitration, but instead Applicant's counsel argues that the requests were unreasonable since the Applicant already replied to these identical requests on 9/1/2023 providing what Applicant believes was relevant and objecting to what Applicant states was vague, unduly burdensome, and beyond the scope of ordinary verification

On each verification request Respondent advised Applicant of the following: As per Regulation 68 Section 65-3.5(o), the insurer may deny a claim if an applicant does not provide within 120 calendar days from the date of the initial request all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. This shall not apply to a prescribed form (NF-Form) as set forth in Appendix 13 of this Title, medical examination request, or examination under oath request.

In further support of its defense, Respondent has submitted the SIU affidavit of Barbara-Ann Chapman, dated 1/22/2024, which indicated that Respondent commenced an investigation, based on various facts and circumstances, which called into question Applicant's eligibility to receive no-fault reimbursement giving rise to Respondent's EUO request(s). Respondent also submits Mr. Izzo's EUO transcript in support of its defense.

Respondent argues that this arbitration is premature as it was filed on 1/25/2024 during the pendency of Respondent's verification requests and before the time to pay or deny the bills had expired.

I agree with Arbitrator Bryan Hiller's analysisin *Summer Physical Therapy,P.C. against State Farm Mutual Automobile Ins. Co.*, AAA Case No.: 17-23-1284-2554, [1/3/2024] regarding filing for arbitration while the claim is in the verification process, wherein he held n pertinent part,

> *In the instant matter, Respondent delayed the claim pending verification. Respondent timely sent it first delay letter to the Applicant on November 18, 2022. The Applicant responded to the requests on January 11, 2023. Applicant filed the instant matter on January 27, 2023. Respondent argues the Applicant prematurely filed this suit. The evidence shows the Applicant filed for the instant arbitration on January 27, 2023. Respondent argues they had until February 10, 2023, to issue its denial or pay the claim as the 30-day timeframe to pay/deny the claim had not yet expired.*

After careful review of the evidence and arguments made by the parties at the hearing, I find the instant arbitration was filed prematurely and the claim is dismissed without prejudice. There are numerous reasons why it is not proper to file arbitration on a disputed claim while that same claim is in the verification process and the 'pay or deny' decision has not yet been made. It also must be noted that to allow this matter to proceed would incentivize all Applicants to file claims prematurely in the hopes it will be ripe at the time of arbitration. This would unduly burden and prejudice the Respondent as the claims process is not to be an adversarial one. Once a claim has been filed in arbitration, Respondent has no choice but to proceed in an adversarial manner. It must be noted that at no time did the Applicant object to the delay or follow up for the status of the investigation prior to filing this arbitration. Furthermore, the purpose of the no fault law is to discourage litigation and encourage resolution during the claims process. Therefore, Applicant's claim is hereby dismissed without prejudice.

There is no response in the record pertaining to the verification requests for these bills prior to the filing of the AR-1. As Applicant failed to provide any response or objection to Respondent's request in this case, Applicant cannot now object to the contents of the verification request at this arbitration. This arbitration was filed prematurely while the claim was in the verification process. Moreover, Applicant failed to respond to Respondent's 9/11/2023 correspondence, which outlined the verification that remained outstanding, and has not been provided to date. The claim is therefore dismissed without prejudice. 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 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, Eileen Hennessy, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/20/2024
(Dated)

Eileen Hennessy

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:
c8b814ef60255ee14649a3b3430c6049

Electronically Signed

Your name: Eileen Hennessy
Signed on: 09/20/2024