

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Queens Radiology Imaging PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-24-1334-8233
Applicant's File No. SSA24-111672
Insurer's Claim File No. 8705409300000001
NAIC No. 22055

ARBITRATION AWARD

I, Paul Weidenbaum, 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: IP

1. Hearing(s) held on 09/24/2024
Declared closed by the arbitrator on 09/24/2024

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

Chris Mango from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,970.90**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed in No-Fault benefits was amended during the arbitration hearing from \$1,970.90 to \$1,728.11 in order to conform to fee schedule, and the amendment was permitted by this arbitrator.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

This arbitration arises out of MRI studies undergone by the injured person, a 47 year old male, who was involved in a motor vehicle accident which occurred on 8/31/23.

Whether the Respondent appropriately delayed for further verification?

4. Findings, Conclusions, and Basis Therefor

This arbitration arises out of MRI studies undergone by the injured person, a 47 year old male, who was involved in a motor vehicle accident which occurred on 8/31/23. Applicant initially sought reimbursement in the sum of \$1,970.90 for the MRIs undergone by the Assignor on 11/2/23. However, during the arbitration hearing, Applicant's counsel amended the amount claimed in No-Fault benefits to \$1,728.11 in order to conform to fee schedule. The bill was not denied, as Respondent claimed that verification was still outstanding.

This decision is based upon the written submissions of counsel for the respective parties as well as oral arguments presented during the 9/24/24 hearing. All denials were timely. Following the amendment to the claim amount, Respondent indicated that it was not pursuing a fee schedule defense and thus this defense was deemed abandoned.

Applicant has established its *prima facie* case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

The burden shifts to the insurer to prove that the services were not medically necessary. An EOU was held of the primary for the Applicant on May 11, 2023 and Respondent made a series of post-EUO verification requests. Respondent made case specific verification requests on December 19, 2023 and January 29, 2024 requesting the following items of additional verification:

1. 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;
2. Written agreements and proof of payment, including lease agreement 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 presents 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).
4. Employment agreements and proof of compensation for medical employees, non medical 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 vouches, each for April 2023, pertaining to Naiyer Imam. However, the remainder of this request remains outstanding.

5. 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;

6. 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.

7. 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;

8. 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.

9. 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.

10. 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. Please note that GEICO will not consider payment for the services rendered by Queens Radiology with respect to the claims listed on Queens RADIOLOGY IMAGING PC until you have provided the additional verification that GEICO has requested. This additional verification is necessary to complete your proof of claim and verify Queens Radiology's eligibility for benefits, and therefore, is a condition of coverage for your claims."

Due to the Applicant not responding to the Respondent's request for additional verification, the Respondent mailed a letter dated January 29, 2024 to the Applicant and the Applicant's attorney again requesting the additional verification, to which the Applicant has not responded. Applicant argued that they have responded to a series of verification previously following the EUO but they were not claim specific responses.

Respondent's attorney argued that since the Applicant did not respond to the Respondent's request for additional verification the Respondent was under no obligation to either pay or deny the Applicant's claim for the radiology studies performed on November 2, 2023. However, on or about 9/1/23, the Applicant's counsel, Super Associates, P.C., subsequent to the 5/11/23 EUO and prior to the services of 11/2/23 which gave rise to the instant claim, sent correspondence objecting in part to the requests as vague, unduly burdensome, and beyond the scope of the Regulations, and wholly unrelated to the services provided by furnishing to the Respondent, at least a partial response to the verification requested, as follows:

1. 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; While many of these documents are publicly available, including the listing on both the New York State Department of Education's website and Department of State's website, all documents in QRI's possession responsive to the request are enclosed at QRI1-QRI3 & QRI18, QRI331-QRI333.

2. 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 QueensRadiology thereunder regarding the locations where it purportedly renders services during the time period of April 2022 through the present; The request is vague, overbroad and unduly burdensome and demanding information outside the scope of the Regulations. Notwithstanding same, all documents in QRI's possession responsive to the request are enclosed at QRI19-QRI49,

3. Documents relating to the income and expenses of Queens Radiology, such as bank statements, deposit and withdrawal logs, cancelled checks (front and back) that evidence payments from Queens Radiology's accounts, commercial lines of credit, and corporate tax returns (including quarterly reports) from April 2022 through the present; The request is vague, overbroad and unduly burdensome and demanding information outside the scope of the Regulations. Tax returns and bank statements will not be provided as they are beyond the bounds of a verification request and no reasonable basis for same has been of could be provided. Notwithstanding same, all documents in QRI's possession responsive to the request are enclosed at QRI124-QRI443 and QRI8-QRI114.

4. 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 Beaugc, and Mirza Pollenge from April, 2022 to present; The request is vague, overbroad and unduly burdensome and demanding information outside the scope of the Regulations. Payroll ledgers will not be provided as they are beyond the bounds of a verification request and no reasonable basis for same has been of could be provided. Notwithstanding same, all documents in QRI's possession responsive to the request are enclosed at QRI111-QRI113 and QRI5-QRI7.

5. 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; The request is vague, overbroad and unduly burdensome and demanding information outside the scope of the Regulations. Payroll ledgers and records and Tax Returns will not be provided as they are beyond the bounds of a verification request and no reasonable basis for same has been of could be provided. Additionally, the salary and/or profit sharing of Dr. Izzo, sole owner of QRI is irrelevant to QRIs eligibility for payments under the No Fault Regulations. Further, the payroll records and employment status of personnel who do not bill the carrier for their services is irrelevant and beyond the scope of reasonable inquiry under the Regulations. Notwithstanding same, see response to requests 3 and 4.

6. 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; The request is improper as it is demanding information which is publicly available. As such, it is being treated as a nullity and does not serve to toll the carrier's time to pay or deny the claims at issue. Notwithstanding same and as a good faith effort to resolve the abusive claim delays, licensure verification can be obtained for Dr. Izzo at: <https://www.theabr.org/myabr/find-a-radiologist?fn=joseph&ln=izzo&st=> and, licensure verification can be obtained for Dr. Imam at: <https://www.theabr.org/myabr/find-a-radiologist?fn=naiyer&ln=imam&st=#> Additional information regarding the doctors' credentials is also publicly available on the New York State's Department of Education website at <https://www.op.nysed.gov/verification-search>.

7. 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; The request is vague, overbroad and unduly burdensome and demanding information outside the scope of the Regulations. Notwithstanding same, all documents in QRI's possession responsive to the request are enclosed at QRI19-QRI46, QRI49, QRI84- QRI110, QRI115-QRI123, and QRI258-QRI322.

8. List of referring providers kept and maintained by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement; The request is vague, overbroad and unduly burdensome and demanding information outside the scope of the Regulations. Notwithstanding same, QRI does not maintain a list of referring providers. Referring providers are listed in the procedure report and have previously been submitted to the carrier with the bill.

9. Patient scheduling records kept and maintained by Queens Radiology for those claims submitted to GEICO for which Provider seeks reimbursement; The request is vague, overbroad and unduly burdensome. Notwithstanding same, QRI does not archive scheduling records.

10. 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 request is vague, overbroad and unduly burdensome. Notwithstanding same, referral form for Hugh Williams will be provided under separate cover.

11. 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.

Respondent continue to insist that verification was not complete, and applicant continued to respond with the same objections and submissions, as late as applicant's letter of June 11, 2024. Respondent supported the need for verification with the 10/23/23 affidavit of Lynette Stone, an SIU [Special Investigations Uniy investigator], who attests as follows:

1. GEICO's investigation, which included but was not limited to, a review and analysis of claims submitted to GEICO for reimbursement, public records, claimant statements, and investigations into other related providers operating out of the same location, revealed evidence that: • Queens Radiology may be utilizing billing and coding practices that seek reimbursement for services improperly billed; • Queens Radiology appears to be rendering medically unnecessary services pursuant to a pre-determined, fraudulent treatment and billing protocol designed solely to enrich Queens Radiology, which may cause Queens Radiology to be ineligible for No-Fault reimbursement; • Queens Radiology may not be eligible for reimbursement based upon the legal and financial relationship between Queens Radiology and those rendering services; and • Queens Radiology may not be in compliance with material licensing laws.

2. Queens Radiology is a medical professional corporation ("PC") allegedly owned by radiologist Joseph Izzo, M.D. ("Dr. Izzo") and incorporated in December 2020. Queens Radiology renders magnetic resonance imaging ("MRI") services at 1575 Hillside Avenue, Suite 100, New Hyde Park, NY ("Hillside avenue"). Sensitivity: Confidential 3. GEICO initiated an evaluation of claims submitted by Queens Radiology because, among other concerns, a majority of Queens Radiology's billing submitted to GEICO lists radiologist Naiyer Imam ("Imam") as the reading radiologist. Imam was a named defendant in a prior lawsuit brought by GEICO, which included allegations that a medical provider named Excel Imaging was not actually owned and operated by Imam, as required by New York law, but by nonphysician laypersons. See *GEICO, et al. v. Excel Imaging, P.C., et. al.*, 12-CV-723 (JBW) (E.D.N.Y. 2012).

4. Further, Imam previously had a medical malpractice claim filed against him in 2017 in the State of Minnesota due to an improper MRI reading that led to the death of a patient. Following the medical malpractice suit, numerous states including Maryland, North Carolina, California, Arizona, Illinois, Mississippi, Texas, Florida and Michigan have issued reprimands of Imam's license to practice medicine.

5. GEICO also had concerns regarding Queens Radiology's billing and coding practices. For example, GEICO's investigation revealed that Queens Radiology submitted

preprinted referral forms to GEICO with its billing comprised of simple check-boxes identifying various body parts that purportedly required MRI testing. These same pre-printed referral forms were often missing identifying information for referring providers and their patients, including address and contact information. A closer review also revealed that some prescriptions and/or referrals for MRIs to Queens Radiology were unsigned by the referring provider. Of the claim files reviewed by GEICO, some even included referral forms that listed a different imaging company altogether.

6. GEICO also has concerns that the MRIs are being rendered pursuant to a predetermined protocol which does not take into consideration the patients' actual medical Sensitivity: Confidential condition. A review of patient files revealed that patients treated at multidisciplinary facilities and received an identical course of care which included: chiropractic care, physical therapy, acupuncture and diagnostic testing after which each patient was referred to Queens Radiology for MRIs. This seemingly "cookie cutter" treatment is indicative of a predetermined protocol which, based on my experience, appears to have been employed by non-physicians for the purpose of turning a profit at the expense of patient care. As part of these protocols, the patients are referred for additional ancillary treatment and are referred for diagnostic services - including services rendered by Queens Radiology - irrespective of the severity of injury.

7. Further, GEICO's review of the claims submitted by Queens Radiology raised suspicions as to the sources of Queens Radiology's referrals and the necessity of the treatment rendered. As explained above, many of the patients who underwent MRIs received referrals for the studies from multi-disciplinary clinics, including a clinic located at 243-51 Merrick Boulevard, Rosedale, New York ("Merrick Blvd clinic"). The Merrick Blvd clinic was alleged to funnel patients pursuant to improper financial arrangements and kickback schemes. See GEICO et. al. v. Mel Waldman, Ph.D. et. al., 1:22-cv-02858-DG-JRC (E.D.N.Y. 2022). The GEICO complaint alleged that the Merrick Blvd clinic provided the named defendants with unfettered access to patients in exchange for kickbacks because the clinics sought to profit from the "treatment" of individuals covered by no-fault insurance and therefore catered to high volumes of insureds. Id..

8. Queens Radiology is also not listed as accredited by the American College of Radiology. The accreditation establishes that the facility meets governmental and third-party payer criteria. It also delineates that the facility meets specific requirements for equipment, medical personnel and quality assurance. Queens Radiology's lack of accreditation raises suspicion that the equipment used by Queens Radiology may not meet specific quality guidelines. Sensitivity: Confidential

9. Based upon GEICO's investigation, GEICO requested Queens Radiology appear for an EUO. On May 11, 2023, Dr. Izzo appeared for the EUO and his testimony confirmed GEICO's basis for requesting an EUO and further necessitated GEICO's request for further documentation to verify Queens Radiology's claims. For example, Dr. Izzo's testimony revealed the following: • Dr. Izzo has a commercial line of credit with an entity named Pulse which finances Queens Radiology's operations (p. 22: l. 20); • Queens radiology employs one technician who performs the technical component of MRIs (p. 26: l. 11; p. 27: 17); • Dr. Izzo and Imam are performing MRI reads for

Queens Radiology (p. 26-27); • Queens Radiology does not market or advertise its services and does not have a website (p. 30: l. 9; p. 30: l. 15; p. 80: l. 4); • Dr. Izzo did not know how a prospective patient could find contact information for Queens Radiology to schedule an MRI other than through their current doctor (p. 30: l. 14); • Dr. Izzo learned of the Hillside Avenue Clinic through Imam, who is the owner of a radiology entity called American Medical Initiatives ("AMI") (p. 31: l. 12; p. 33: l. 9); • Dr. Izzo was formerly an employee of Dr. Imam at AMI (p. 31: l. 12; p. 33: l. 17); • Dr. Izzo is an employee of AMI, which is owned by Imam, and Imam is an employee of Queens Radiology owned by Dr. Izzo (p. 34: l. 11); • Dr. Izzo was an employee of AMI despite owning Queens Radiology and stopped performing services for AMI in April 2022 (p. 33: l. 23; p. 34: l. 8); • Imam informed Dr. Izzo about the opportunity at the Hillside Avenue location and that there was both office space and "machinery" there (p. 32: l. 4); • While Dr. Paul Lerner is the owner of the office space at Hillside Avenue, Queens Radiology pays \$14,000 in rent to an entity named AZ Healthcare for use of the space and MRI machine (p. 32: l. 21; p. 44: 16-19; p. 47: l. 19; p. 107: l. 13); • An individual named Mohamad Rahman ("Rahman"), who Dr. Izzo met through Imam, signed the lease agreement on behalf of AZ Healthcare (p. 46; p. 5); Sensitivity: Confidential • Dr. Izzo did not know the terms of his lease agreement at Hillside Avenue (p. 47: l. 5; p. 50: l. 3-7); • Dr. Izzo did not conduct a background check of Imam before deciding to hire him and did not know why he didn't conduct said background check (p. 37: p. 8-13); • Dr. Izzo did not know whether he would have hired Imam had he known about Imam's prior disciplinary actions (p. 38: l. 14); • An MRI machine was already being installed at Hillside Avenue when Dr. Izzo came into the space (p. 53: l. 22); • Dr. Izzo was introduced to his MRI technician and his administrative employees through Imam when they worked for AMI (p. 61: l.13-2; p. 73: l. 17; p. 74: l. 5); • Imam reads MRIs on behalf of Queens Radiology from his AMI office and is never physically present at Hillside Avenue (p. 69: l. 4-11); • Dr. Izzo rarely meets with patients before or after an MRI is conducted and never reviews a patient's medical records before they receive an MRI (p. p. 70-71;122: l. 22); • Imam never meets with patients in his capacity as a radiologist for Queens Radiology (p. 71: l. 21); • Dr. Izzo gets patients for Queens Radiology based upon his reputation (p. 81: l. 13); • Imam helped Dr. Izzo establish Queens Radiology (p. 83: l. 14); • Queens Radiology's secretaries decide what codes to place on bills submitted to GEICO for reimbursement (p. 92: l. 10); • Dr. Izzo does not review or sign the bills that are submitted to GEICO for reimbursement (p. 94: l. 5-8); • Queens Radiology does not perform services upon a patient absent a signed referral despite the fact that a series of bills shown to Dr. Izzo contained unsigned referrals (p. 98: l. 22; p. 150: l. 20); • Queens Radiology is not ACR certified (p. 101: l. 10); • While Queens Radiology does not have a lease with Hitachi for the use of the MRI machine located at Hillside Avenue, it does have a service agreement with Hitachi for the servicing of the MRI machine (p. 107: l. 10-17); Sensitivity: Confidential • Dr. Izzo would not testify as to what Queens Radiology's gross revenue was in 2022 (p. 112); • Dr. Izzo is receiving referrals from two different medical providers whom he has never met and claimed they send him patients based upon his reputation (p. 113-117); • Dr. Izzo did not know how Dr. Michael Jurkowich ("Dr. Jurkowich") came into possession of Queens Radiology's referral form and did not recognize the signature that appeared on a referral form that was shown to him (p. 119-120); • Dr. Izzo has never been to the Merrick Boulevard clinic but receives referrals from there (p. 119); • Dr. Izzo could not remember what clinic locations he visited nor how many he visited to get business (p.

120-121).

10. Following the EUO, in order to confirm whether Queens Radiology complied with New York law, GEICO sought verification in the form of certain documents to address the above-referenced concerns. The request for additional verification was necessary to confirm Dr. Izzo's testimony. While GEICO acknowledges receipt of some documents from Queens Radiology, Respondent notes that the following documents remain outstanding:

- 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;
- 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).
- 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 Confidentiality: Confidential 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.
- Employment agreements and proof of compensation for medical employees, non-medical 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.
- 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;
- 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.
- 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.
- 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.
- 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. • 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. Ms. Stone's affidavit highlights portions of Dr. Izzo's testimony that she suspects raises suspicions regarding improper practices. Reviewing the testimony, the requests by respondent, and responses by applicant, this arbitrator conclude that her position is founded on suppositions and unsupported allegations.

The strength of inferences of fraud must be measured by common sense and the logic of common experience itself. *A.B. Medical Services PLLC v. State Farm Mut. Auto. Ins. Co.*, 7 Misc.3d 822, 831, 795 N.Y.S.2d 843, 851 (Civ. Ct. Kings Co. 2005) (citing *Schneider v. Kings Highway Hospital Center, Inc.*, 67 N.Y.2d 743, 744-745 (1986)).

The strength of the Respondent's defense must be evaluated to determine whether it is sufficient to shift the burden to the Applicant to explain how this particular defense is not true. In this case, it does not. I am satisfied that applicant has adequately responded to appropriate requests for verification, and, in those instances where applicant has failed to respond to any request, that request was not appropriate in the first place. Respondent has not demonstrated good cause, or any significant evidence, beyond mere allegations, that demonstrates Applicant's behavior being tantamount to fraud or even some indicia of improper practices.

The analysis and findings of Justice Consuelo Mallafre Melendez in *Arthur Ave. Med. Servs., PC v GEICO Ins. Co.*, 2021 NY Slip Op 21108, decided on April 20, 2021 is persuasive. "Both the Mallela and Carothers courts stressed principles of expediency and good cause in investigations of fraudulent licensing and improper fee sharing and acknowledged that abuse of the verification process may exist. At no time did the Court of Appeals state that carriers have unfettered authority in the extent of these investigations." The verification sought goes beyond the purview of the No-fault reimbursement system. Moreover, the purpose of the No-Fault Law "is not served when an insurer repeatedly request[s] the same verification from the same provider, especially in the situation where the material demanded has previously been provided or is readily obtainable from easily accessible public records." See, 33 Misc.3d 1236(A), 941 N.Y.S.2d 536 (Table), 2011 N.Y. Slip Op. 52255(U) at 3, 2011 WL 6355291 (Dist. Ct. Nassau Co., Fred J. Hirsh, J., Dec. 10, 2011). "A provider should not have to repeatedly provide documentation it has already provided unless the insurer can establish a reasonable basis and rational need for demanding this material anew." *Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co.*, 33 Misc.3d 1236(A), 941 N.Y.S.2d 536 (Table), 2011 N.Y. Slip Op. 52255(U) at 3, 2011 WL 6355291 (Dist. Ct. Nassau Co., Fred J. Hirsh, J., Dec. 10, 2011).

As the proof herein amply demonstrates that Applicant adequately responded to the appropriate requests for verification, respondent was obligated to pay or deny the claim. The claim is therefore granted as if not timely denied. This arbitrator acknowledges that

during the hearing, Respondent's counsel cited a prior decision of Arbitrator Hiller [AAA Case Number 17-14-1334-8250], rendered in July 2024, which found in favor of Respondent on similar facts and circumstances as those presented herein.

Below, I quote Arbitrator Hiller from that earlier decisions "Section 65-3.5 (b) of the No-Fault Regulations 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. Section 65-3.6 (b) of the No-Fault Regulations states: Verification requests. 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. Section 65-3.8 (a) (1) of the No-Fault Regulations states: Payment or denial of claim (30 day rule). 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 65-3.5 of this subpart. In the instant matter, Respondent delayed the claim pending verification. Respondent timely sent it first delay letter to the Applicant on December 22, 2023. Applicant filed the AR-1 placing this matter in arbitration on 1/25/24.

Respondent argues the Applicant prematurely filed this suit. The evidence shows the Applicant filed for the instant arbitration on February 1, 2024. Respondent argues they had until March 21, 2024 to issue its denial or pay the claim as the 30-day timeframe to pay/deny the claim had not yet expired. After a thorough and careful review of the evidence submitted and arguments advanced by the parties at the hearing, I find the instant arbitration was filed prematurely, and therefore 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 still pending further verification, 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. For these reasons, Applicant's claim is hereby dismissed without prejudice."

This arbitrator respectfully declines to follow the reasoning applied to these facts and circumstances by my learned colleague, Arbitrator Hiller. Rather, it is my determination that the 9/1/23 correspondence sent to the insurer by Applicant's counsel constituted substantial compliance with the requested verification. By letter dated 9/11/23, the Respondent acknowledged the 9/1/23 correspondence from Super Associates, P.C.,

while noting a list of items which Respondent contended were still outstanding. On 9/12/23, Steven Super, Esq., personally mailed a reply to the Respondent's 9/11/23 correspondence.

The Claims Practice Principles which govern the prescribed conduct for all parties to No-Fault claims litigation is informed by a spirit of cooperation, and specifically admonishes insurers not to treat a health care provider Applicant as an adversary. The entire logic underpinning the No-Fault regulatory scheme is the prompt resolution of claims, not the delay of the claims process. Accordingly, I find in favor of the Applicant, and reimbursement in the amended sum of \$1,728.11 is due and owing herein. This decision is in full disposition of all claims for reimbursement of No-Fault benefits presently pending 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	Amount Amended	Status
	Queens Radiology Imaging PC	11/02/23 - 11/02/23	\$967.70	\$724.91	Awarded: \$724.91
	Queens Radiology Imaging PC	11/02/23 - 11/02/23	\$1,003.20	\$1,003.20	Awarded: \$1,003.20
Total			\$1,970.90		Awarded: \$1,728.11

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/06/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the filing date for this case, 2/6/24, until payment has been made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

After calculating the sum total of the first party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a minimum of \$60 and a maximum of \$850. See 11 NYCRR Section 65-4.6(c) and (e). However, if the benefits and interest awarded thereon are less than or equal to Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR Section 65-4.6(b). For cases filed after February 4, 2015 there is 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 NASSAU

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

09/24/2024
(Dated)

Paul Weidenbaum

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:
b091f7a9cdc4b5cddd0a09841247dfd5

Electronically Signed

Your name: Paul Weidenbaum
Signed on: 09/24/2024