

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Andrew Hall MD PLLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1323-6539
Applicant's File No.	LIP-31745
Insurer's Claim File No.	0674314670000004
NAIC No.	22063

ARBITRATION AWARD

I, Stephen Czuchman, 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: the patient, AC.

1. Hearing(s) held on 08/30/2024
Declared closed by the arbitrator on 08/30/2024

Lee-Ann Trupia, Esq. from Law Offices of Ilya E Parnas P.C. participated virtually for the Applicant

Andrew Williams, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$8,320.44**, 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 patient (AC), a then 29-year-old male, was injured in a motor vehicle accident on 3/27/23 as the restrained driver of an automobile involved in a collision with another motor vehicle. Applicant seeks to recover assigned first-party no-fault benefits consisting of fees for cervical spine surgery performed on 7/21/23. Respondent denied the claim, alleging that applicant failed to submit requested post-examination under oath (EUO) verification within 120 days of the initial requests or written proof providing reasonable justification for the failure to comply and that the billed fees were not in accordance with the applicable fee schedule.

The issue in dispute is whether respondent has preserved and substantiated the basis for the denials of claim.

4. Findings, Conclusions, and Basis Therefor

Applicant has established a prima facie case of entitlement to reimbursement of its claim by submitting evidence that the prescribed statutory billing forms were mailed and received by the respondent and payment of No-Fault benefits was overdue. See *Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 NY3d 498 (2015). Once an applicant health services provider makes out a prima facie case, the burden shifts to the respondent insurer to timely request verification, deny or pay the claim. *Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co.*, 9 NY3d 312 (2007); 11 NYCRR 65-3.8(a)(1) ("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 section 65-3.5 of this subpart.") Most defenses unrelated to coverage are precluded if not preserved in a timely denial of claim. *Cent. Gen. Hosp. v. Chubb Group of Ins. Cos.*, 90 NY2d 195 (1997); *Hosp. for Joint Diseases v. Travelers Prop. Cas. Ins. Co.*, 9 NY3d 312 (2007).

Applicant billed respondent \$7,516.21 for surgeon's fees and \$804.23 for physician's assistant's fees for a cervical discectomy, annuloplasty, disc injection and radiographic interpretation performed on the patient by Benjamin Portal, M.D., assisted by Robert Robenov, P.A., on 7/21/23. After receiving the bills on 8/4/23, respondent mailed an initial notice to the applicant dated 8/29/23, requesting Andrew Hall, M.D.'s appearance at an EUO on 9/27/23. Respondent issued additional EUO notices to the applicant dated 10/4/23, 10/25/23, and 11/29/23, requesting Dr. Hall's appearances at EUOs on 10/17/23, 11/29/23, and 12/22/23. An EUO of Dr. Hall was held via videoconference on 12/22/23. Following the EUO, respondent issued post-EUO verification requests to the applicant dated 1/9/24 and 2/9/24, seeking

1. Copies of all lease and sublease agreements and proof of payment thereunder, including, but not limited to canceled checks (copies of the front and back of checks), issued by Hall PLLC to lease or sublease space at any location from January 1, 2023 through the present.
2. For January 1, 2023 through the present, copies of bank statements, account opening documents, signature cards, canceled checks (copies of the front and back of checks), withdrawal records, and records of electronic transfers in connection with any bank account held in the name of Hall PLLC, including but not limited to the account at Bank of America.
3. Copies of all written agreements, bank statements, canceled checks (copies of the front and back of checks) and/or proof of payment, reports, and invoices related to payments made by Hall PLLC from January 1, 2023 through the present to: (i)

Billing Experts; (ii) Magic Land Corporation; (iii) Integration Solutions Corp.; and (iv) ProgNOCIS/Bizmatrics.

4. For January 1, 2023 through the present, copies of (i) Hall PLLC's corporate tax returns (including quarterly reports and schedules); (ii) Hall PLLC's general ledgers; (iii) copies of all W-2, 1099, and/or K-1 forms issued by Hall PLLC; and (iv) Hall PLLC's ADP records.

5. Copies of Hall PLLC's business cards and signs which Hall PLLC displays at any location it has treated patients since January 1, 2023.

6. For the patients Appendix "A," copies of (i) all examination notes taken during a Hall PLLC examination that were uploaded to Hall PLLC's EMR system by any of Hall PLLC's treating providers as testified to by Hall; (ii) all paperwork provided by either Hall PLLC or a surgery center that was filled out prior to a procedure at the surgery center; (iii) all communications exchanged between Hall PLLC and a surgery center relating to scheduling a patient procedure; and (iv) procedure notes from the day of the procedure.

7. Copies of (i) all literature Hall testified to as an authority on the efficacy of percutaneous discectomies, including but not limited to from the United States, Korea, and Japan; (ii) CVs and/or certifications for any individual (other than Hall) who performed percutaneous discectomies and/or other procedures on Hall PLLC's patients, including but not limited to for Dr. Portal and Dr. Koehler; (iii) Hall's certification from the Elliquence course.

8. Documents to verify all equipment utilized by Hall PLLC in the performance of percutaneous discectomies, including but not limited to the Herniatome equipment.

9. Copies of all credentialing paperwork submitted by Hall PLLC and/or Hall to any surgical center where Hall PLLC provided procedures from January 1, 2023 through the present.

10. For January 1, 2023 through the present, all emails exchanged between Hall PLLC and (i) any individual and/or entity operating from any location where Hall PLLC provided healthcare services; (ii) any pharmacy; (iii) Billing Experts; and (iv) Magic Land Corporation.

11. For January 1, 2023, copies of all ProgNOCIS reports generated for a pharmaceutical prescription issued by Hall PLLC for the patients in Appendix "A."

12. For January 1, 2023 through the present, copies of all checks, proof of payment and/or correspondence maintained by Hall PLLC relating to the lien payments testified to by Hall.

13. The names of the transportation companies that provide transportation services to Hall PLLC's patients that receive procedures at any surgical center from January 1, 2023 through the present.

Applicant responded in writing to the post-EUO verification requests on 3/18/24 and 3/26/24, partially complying with and objecting to them. Respondent's attorney's mailed letters to the applicant dated 3/20/24 and 3/27/24 identifying the post-EUO verification that was still outstanding:

1. Copies of Hall PLLC's lease agreement for 104-08 Roosevelt Avenue, Corona, New York and 2379 Ralph Avenue, Brooklyn, New York. GEICO acknowledges receipt of leases from Hall PLLC. Based on Hall's testimony, the above leases remain outstanding.

2. For January 1, 2023 through the present, (i) copies of account opening documents, signature cards, and the front and back of canceled checks in connection with any bank account held in the name of Hall PLLC, including but not limited to the checking account at Bank of America; and (ii) canceled checks (front and back of checks) and monthly statements for the savings account ending in 7687 at Bank of America.

3. Copies of all written agreements, bank statements, canceled checks (copies of the front and back of checks) and/or proof of payment, reports, and invoices related to payments made by Hall PLLC from January 1, 2023 through the present to: (i) Billing Experts; (ii) Magic Land Corporation; (iii) Integration Solutions Corp.; and (iv) ProgNOCIS/Bizmatic. Based on Hall PLLC's partial compliance with this request, GEICO no longer includes a request for (i) invoices produced for Hall PLLC by Integration Solutions Corp. for April 2023, June 2023, September 2023, or October 2023; (ii) invoices or proof of payment for Magic Land Corp. Additionally, this request is only requesting payments from Hall PLLC to Integration Solutions Corp. other than the checks provided to date, which were dated February 7, 2023, April 5, 2023, May 2, 2023, August 2, 2023, October 10, 2023, and December 5, 2023.

4. For January 1, 2023 through the present, copies of (i) Hall PLLC's corporate tax returns (including quarterly reports and schedules); (ii) Hall PLLC's general ledgers; K-1 forms issued by Hall PLLC; and (iv) Hall PLLC's ADP records.

5. Copies of signs which Hall PLLC displays at any location it has treated patients since January 1, 2023. GEICO acknowledges receipt of a copy of Hall PLLC's business card. Hall testified that Hall PLLC hangs a sign in the offices regarding his pain management practice.

6. For the patients Appendix "A," copies of (i) all examination notes taken during a Hall PLLC examination that were uploaded to Hall PLLC's EMR system by any of Hall PLLC's treating providers as testified to by Hall; (ii) all paperwork provided by either Hall PLLC or a surgery center that was filled out prior to a procedure at the surgery center; (iii) all communications exchanged between Hall PLLC and a surgery center relating to scheduling a patient procedure; and (iv) procedure notes from the day of the procedure. GEICO acknowledges Hall PLLC producing copies of typed examination and procedure reports. Hall PLLC also did not provide a letter explaining what these patient charts were, but based on our review, none of these documents were responsive to this request.

7. Documents to verify all equipment utilized by Hall PLLC in the performance of percutaneous discectomies, including but not limited to the Herniatome equipment.

8. For January 1, 2023 through the present, all emails exchanged between Hall PLLC and (i) any individual and/or entity operating from any location where Hall PLLC provided healthcare services; (ii) any pharmacy; (iii) Billing Experts; and (iv) Magic Land Corporation.

9. For January 1, 2023, copies of all ProgNOCIS reports generated for a pharmaceutical prescription issued by Hall PLLC for the patients in Appendix "A."

10. For January 1, 2023 through the present, copies of all checks, proof of payment and/or correspondence maintained by Hall PLLC relating to the lien payments testified to by Hall.

11. The names of the transportation companies that provide transportation services to Hall PLLC's patients that receive procedures at any surgical center from January 1, 2023 through the present.

Respondent denied the bills on 5/24/24, alleging, "Payment is denied. You have failed to comply with our verification request within 120 calendar days of such request or provide us with written proof providing reasonable justification for your failure to comply with the verification request." The denials also set forth a fee schedule defense.

According to the prescribed policy endorsement set forth at 11 NYCRR § 65-1.1, "Upon request by the Company, the eligible injured person or that person's assignee or representative shall...(b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same..." Appearance by a health services provider at a duly requested EUO is a condition precedent to coverage. *Arco Med. N.Y., P.C. v. Lancer Ins. Co.*, 37 Misc.3d 90 (App Term 2d Dept 2012); *Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co.*, 35 Ad3d 720 (2d Dept 2006).

A verification request by an insurer will extend the thirty-day period until the requested verification is received. 11 NYCRR § 65-3.5; *Hosp. For Joint Diseases v. Elrac, Inc.*, 11 AD3d 432 (2d Dept 2004); *Westchester County. Med. Ctr. v. New York Cent. Mut. Fire Ins.*, 262 AD2d 553 (2d Dept 1999). 11 NYCRR § 65-3.5(c) states that "[t]he insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." Where a requested verification is not provided, an insurer is not required to pay or deny the claim. 11 NYCRR § 65-3.8; *NY & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, 5 AD3d 568 (2d Dept 2004). 11 NYCRR § 65-3.5(b) provides that "[s]ubsequent 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. Per 11 NYCRR § 65-3.6(b), [a]t a minimum, if any requested verification has not been supplied to the insurer 30 calendar days after the original request, the insurer shall, within ten calendar days, follow-up with the party from whom the verification was originally requested, either by a telephone call, properly documented in the file, or by mail."

Pursuant to the Fourth Amendment to 11 NYCRR § 65-3, effective April 1, 2013, "[a]n applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all verification under the applicant's control or possession or written proof providing reasonable justification for failure to comply." 11 NYCRR § 65-3.5(o).

In support of the denials, respondent submitted a 2/22/24 affidavit of Kimberly Lobasso, an investigator in respondent's Special Investigations Unit (SIU). Ms. Lobasso attests that the post-EUO verification identified in the 3/20/24 and 3/27/24 letters from counsel was reasonable and necessary to verify the claim to address respondent's concerns raised in the SIU investigation as to whether applicant was improperly billing the respondent for excessive charges or services not rendered, whether applicant was billing for services according to a predetermined treatment protocol designed to maximize profits, whether applicant was billing for medically unnecessary services, and whether applicant was providing services pursuant to improper referrals and financial arrangements.

At the hearing, counsel for the respondent argued that the denials should be sustained because the post-EUO verification was reasonable and necessary to verify the claim based on the investigator's affidavit and Dr. Hall's EUO testimony, and it was undisputed that applicant did not fully comply with the post-EUO verification before filing. Counsel for the applicant argued that applicant substantially complied with the post-EUO verification before filing and that the denials were defective and untimely because verification was deemed complete following Dr. Hall's EUO on 12/22/23 pursuant to 11 NYCRR § 65-3.8(a)(1) and *Burke Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co.*, 2024 NY Slip Op 24111 (App Term 2d Dept 2024).

After carefully reviewing the written submissions on the ADR Center and considering counsel's oral argument at the hearing, I determine that the 120-Day rule defense cannot be sustained. The denials are untimely and defective as a matter of law, as verification of the claim was deemed complete following Dr. Hall's EUO on 12/22/23. See *Burke Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co.*, 2024 NY Slip Op 24111 (App Term 2d Dept 2024)

defendant's time to pay or deny the claims was tolled by the EUO scheduling letter, which letter was "timely" issued

pursuant to [11 NYCRR 65-3.5 \(b\)](#) and [65-3.8 \(l\)](#), but, contrary to defendant's apparent position, that toll expired September 14, 2018 when the EUO was conducted and proof of claim became complete (see [11 NYCRR 65-3.8 \[a\] \[1\]](#))["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 [section 65-3.5](#) of this Subpart. In 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"].

While the denial was issued after filing, I find the claim was overdue and arbitrable pursuant to 11 NYCRR § 65-4.2(b)(1)(v) when applicant filed for no-fault arbitration.

As to the fee schedule defense, the no-fault regulations provide that an applicant health services provider is not entitled to reimbursement exceeding the applicable fee schedule even where a claim was neither paid nor denied in a timely fashion. See 11 NYCRR § 65-3.8(g)(1)(ii), eff. Apr. 1, 2013. It is the insurer's burden to prove that disputed fees exceed the applicable fee schedule. *East Coast Acupuncture, P.C. v. Hereford Ins. Co.*, 51 Misc.3d 441 (Civ Ct Kings County 2016). If an insurer fails to demonstrate by competent evidentiary proof that a provider of health services billed more than the applicable fee schedule, its fee schedule defense cannot be sustained. *Continental Medical PC v. Travelers Indemnity Co.*, 11 Misc.3d 145(A) (App Term 1st Dept 2006). However, an arbitrator may take judicial notice of the applicable fee schedules. *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 AD3d 13 (2d Dept 2009); *Z.A. Acupuncture, P.C. v. Geico Ins. Co.*, 33 Misc.3d 127(A) (App Term 2d Dept 2011); CPLR § 4511. New York's No-Fault law adopts the existing fee schedules prepared by the chairman of the Workers' Compensation Board for industrial accidents. 11 NYCRR 68.1(a); 11 NYCRR § 65-3.16(a)(1). See 2018 New York Workers' Compensation Medical Fee Schedule, effective 10/1/2020 (the "fee schedule"). If the respondent makes a prima facie showing that the fees charged by the applicant were in excess of the applicable fee schedule, the burden shifts to the applicant to show its charges involved a different interpretation of the schedules or an inadvertent miscalculation or error. *Cornell Medical, P.C. v. Mercury Casualty Co.*, 24 Misc.3d 58 (App Term 2d Dept 2009).

In support of the fee schedule defense, respondent submitted 8/8/24 fee schedule affirmations of Marta Brzuchacz-Donnelly, CPC, who attests that the proper no-fault rate for the billed services is \$5,455.05 for the surgeon's bill and \$555.73 for the physician's assistant's bill based on a plain reading of the fee schedule. I find Ms. Brzuchacz-Donnelly's affirmations sufficient to make a prima facie showing that the billed fees were excessive and not in accordance with the fee schedule. Applicant did not submit any evidence in opposition to respondent's proofs raising an issue of fact regarding respondent's fee schedule calculation. Accordingly, respondent's fee schedule defense is sustained.

Accordingly, based on a fair preponderance of the credible evidence, applicant is awarded \$6,010.78, along with statutory interest and attorney's fees, and the return of its filing fee.

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
	Andrew Hall MD PLLC	07/21/23 - 07/21/23	\$7,516.21	Awarded: \$5,455.05
	Andrew Hall MD PLLC	07/21/23 - 07/21/23	\$804.23	Awarded: \$555.73
Total			\$8,320.44	Awarded: \$6,010.78

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/02/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay applicant interest accruing from 11/2/2023, the date of filing, at the rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR § 65-3.9.

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

09/30/2024

(Dated)

Stephen Czuchman

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:
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Electronically Signed

Your name: Stephen Czuchman
Signed on: 09/30/2024