

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

eMed Pharmacy Corp.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1311-2185
Applicant's File No.	RFA23-318916
Insurer's Claim File No.	0095402670101061
NAIC No.	22055

ARBITRATION AWARD

I, Michelle Entin, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: Assignor

1. Hearing(s) held on 08/29/2024
Declared closed by the arbitrator on 08/29/2024

Philip Kim, Esq., from Horn Wright, LLP participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$1,206.70**, 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

Whether Applicant is entitled to reimbursement of \$1,206.70 for prescription medication provided to the injured party/Assignor, a 22 year old female, from December 3, 2022 through January 7, 2023, in connection with injuries sustained by Assignor in an automobile accident which occurred on September 7, 2022.

Respondent has denied this claim based upon the Applicant's failure to provide responses to its requests for verification.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the written submissions and oral arguments of the parties.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. NYCRR 65-4.5 (o) (1) (Regulation 68-D).

I have reviewed the relevant documents submitted to the Electronic Case Folder as of the date of this hearing and for the reasons as set forth below, I find that Applicant is entitled to reimbursement for the prescription medication provided.

Assignor, a 22 year old female, was involved in an automobile accident on September 7, 2022. Applicant seeks reimbursement for Naproxen, Omeprazole and Tylenol provided to the Assignor on December 3, 2022 and Naproxen and Omeprazole provided on January 7, 2023.

Applicant has established its prima facie showing of entitlement to reimbursement by submitting evidentiary proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits were overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D. 3d 742, (2d Depart., 2004).

The Respondent denied the claims based upon the failure to comply with verification requests within 120 calendar days.

Pursuant to 11 NYCRR 65-3.5 (o) [effective as of April 1, 2013], provides that, "an insurer may issue a denial, if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply."

Respondent, by Benjamin Pinhasov appeared for an Examination Under Oath ("EUO") on November 15, 2022.

Following the EUO, Respondent issued verification requests seeking the following documents:

1. All documents related to the transfer of ownership from Maya Podlesnaya to Benjamin Pinhasov, including any bills of sale, transfer of shares documentation, written agreements, and/or contracts (and all schedules and attachments thereto) and proofs of payment thereunder;
2. All W-2, 1099, K-1 forms, and employment agreements (where applicable) for all persons who have performed work for or on behalf of eMed, including, but not limited to, any documentation regarding employee status or relationship of any eMed employee from January 1, 2021 to the present; Application documents, registration forms, and any

accompanying documents evidencing ownership submitted by or on behalf of eMed to the New Jersey and New York Boards of Pharmacy in connection with any request for registration or licensure and/or the transfer of any registration or license;

3. Application documents, registration forms, and any accompanying documents evidencing ownership submitted by or on behalf of eMed to the New Jersey and New York Boards of Pharmacy in connection with any request for registration or licensure and/or the transfer of any registration or license;

4. All payroll and tax returns filed from January 1, 2021 to the present by or on behalf of eMed;

5. Copies of bank statements from January 1, 2021 to the present relating to eMed's bank account(s), including copies of cancelled checks, from January 1, 2021 to the present;

6. Copies of licenses and certifications for all pharmacists and pharmacy technicians who have been employed by eMed from 2021 to the present;

7. All lease agreements for the locations where eMed operates, including those locations within Hudson Regional Hospital, including both the first and second floors, and any proofs of payment thereunder for use of said locations;

8. Copies of all purchase invoices, wholesale receipts, and related documentation, including copies of proofs of payment made thereunder, evidencing the purchase of all pharmaceutical products dispensed to the eligible injured persons listed on EMED PHARMACY CORP

9. Copies of the assignment of benefit forms, fully signed delivery receipts/slips, and original signed prescriptions for the pharmaceutical products eMed dispensed to the patients listed in EMED PHARMACY CORP, and which resulted in eMed submitting a claim for reimbursement to GEICO;

10. Copies of any written agreements/contracts and proofs of payment thereunder between eMed and any pharmaceutical wholesalers utilized by eMed from 2021 to the present;

11. Copies of any written agreements/contracts and proofs of payment thereunder between eMed and any company/entity that delivers pharmaceuticals on behalf of eMed from 2021 to the present;

12. All records/spreadsheets kept by eMed for the purposes of recording/identifying the prescribing medical providers writing prescriptions to eMed; and

13. Copies of any marketing and/or advertising materials utilized by eMed for purposing of expanding or soliciting business from medical providers.

Applicant had previously responded to similar requests on March 22, 2023, and said response noted a request for an extension of time to provide the records that Respondent sought.

Further, both parties have submitted evidence establishing communication. Applicant's counsel maintains that Applicant has responded to the verification requests by letter dated March 22, 2023. Applicant counsel also contended that the holding in *Burke Physical Therapy, P.C., v. State Farm Mutual Auto Insurance Co.*, 2024 N.Y. Slip Op. 24111, (App. Term, 2d Dept., 3/15/24), that Respondent's time to pay or deny the claim was not tolled.

It is noted, that in the matter of *Burke Physical Therapy, P.C. v. State Farm Mutual Auto Insurance Co.*, 2024 N.Y. Slip Op. 24111, (App. Term, 2d Dept., 3/15/24), the Court held that, "[a]ny requests for additional verification must be made within 15 business days of receipt of a prescribed verification form." [See, 11 NYCRR 65-3.8(1).] It stated further that the Regulations do not provide a toll of the time to pay or deny a claim created by a timely additional verification request which grants the insurer added opportunities to make verification requests which would otherwise be untimely. [Citing, *Neptune Medical Care, P.C. v. Ameriprise Auto & Home Insurance Co.*, 48 Misc.3d 139, 2015 N.Y. Slip Op. 51220[U], App. Term, 2d Dept, 2d, 11 & 13 Jud. Dists, 2015.]

Here, I find that the post-EUO requests are insufficient to toll the Respondent's time to pay or deny the claim, in accordance with the holding in *Burke*, supra.

Based upon the foregoing and the facts of this matter, and for the reasons as set forth above, I find the denials to be without adequate substantiation and find that Applicant is entitled to reimbursement for the prescription medication provided.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

DECISION: AWARD IN FAVOR OF APPLICANT FOR \$1206.70 FOR PRESCRIPTION MEDICATION PROVIDED ON DECEMBER 3, 2022 AND JANUARY 7, 2023.

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
	eMed Pharmacy Corp.	12/03/22 - 12/03/22	\$616.49	Awarded: \$616.49
	eMed Pharmacy Corp.	01/07/23 - 01/07/23	\$590.21	Awarded: \$590.21
Total			\$1,206.70	Awarded: \$1,206.70

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/10/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the Applicant interest computed from the date of filing of the AR-1 at a 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).

C. Attorney's Fees

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

The insurer shall also pay the Applicant attorney's fees upon the amount awarded and the interest, as calculated in section "B" above, and in accordance with 11 NYCRR 65-4.6(d), for the following claim:

Claim in the amount of \$1206.70

- 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, Michelle Entin, 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)

Michelle Entin

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:
7648cf7387fc60e4c8a9bb618993c6ec

Electronically Signed

Your name: Michelle Entin
Signed on: 09/30/2024