

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Complete Medical Care PC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1349-0414

Applicant's File No. CF13028248

Insurer's Claim File No. 0728173568

NAIC No. 29688

ARBITRATION AWARD

I, Teresa Girolamo, Esq., 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: N.S.

1. Hearing(s) held on 10/22/2024
Declared closed by the arbitrator on 10/22/2024

Tinamarie Franzoni, Esq. from Choudhry & Franzoni, PLLC participated virtually for the Applicant

Dana Nolan, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,401.76**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the time of the Arbitration Applicant reduced the amount in dispute to \$3,558.81.

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

3. Summary of Issues in Dispute

Whether Respondent is able to establish its defense based upon the 120-Day Rule?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing. This decision is based on my review of that file, as well as the arguments of the parties at the hearing. Each of the parties appeared via ZOOM.

Legal Analysis/ Facts:

As a complete proof of claim is a prerequisite to receiving no fault benefits, a claim need not be paid or denied until all demanded verification is provided (see, 11 NYCRR 65- 3.5[c]; *Montefiore Med. Ctr . NY Central Mutual Fire Ins. Co.*, 9 A.D.3d 354, 780 N.Y.S.2d 161 (2nd Dep't 2004); *NY & Presbyterian Hosp. v. American Transit Ins. Co.*, 287 A.D.2d 699, 733 N.Y.S.2d 80 (2nd Dep't 2001); *Hosp. for Joint Diseases v. Elrac, Inc.* , 11 A.D.3d 432, 783 N.Y.S.2d 612 (2nd Dep't 2004).

When verification has properly been requested on a claim, a follow up request has been issued and verification has not been received, any action or arbitration to collect that claim is premature. *Metroscan Medical Diagnostics PC v. Progressive Cas. Ins. Co.*, 15 Misc.3d 126A, 836 N.Y.S.2d 500, 2007 NY Slip Op 50500U, 2007 N.Y. Misc. LEXIS 903 (App. Tm, 2nd Dep't 2007); *Doshi Diagnostic Imaging Servs. v. State Farm Ins. Co.*, 16 Misc.3d 42, 842 N.Y.S.2d 153, 2007 NY Slip Op 27193, 2007 Misc. LEXIS 3524 (App. Tm, 2nd Dep't 2007); *Elmont Open MRI & Diagnostic Radiology P.C. d/b/a/ All County Open MRI & Diagnostic Radiology v. State Farm Ins. Co.*, 15 Misc.3d 139A, 841 N.Y.S.2d 819, 2007 NY Slip Op 50988U, 2007 N.Y. Misc. LEXIS 3526 (App. Term, 2d Dept 2007).

If a provider, who has failed to respond to verification requests, brings an action, the action should be dismissed as premature. *Elite Chiropractic Services PC v. Travelers Ins. Co.*, 9 Misc.3d 137(A) (App Tm, 1st Dep't 2005).

I note that the New York State Department of Financial Services, issues a 4th Amendment to the 11 N.Y.C.R.R . §65-3. Specifically the following section, 65-3.5 (o) which is effective for all dates of service on or after 4/1/13. Same clearly pertains to the case now before me.

11 N.Y.C.R.R . §65-3 (o) reads as follows:

(o) 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. This subdivision 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. This subdivision shall apply, with respect to claims for medical services, to any treatment or service rendered on or after April 1, 2013 and with respect to claims for lost earnings and reasonable and necessary expenses, to any accident occurring on or after April 1, 2013.

Facts:

In this case N.S. was involved in a motor vehicle accident on 9/2/2023. Applicant filed for Arbitration on 5/23/2024 seeking \$4,401.76. According to the AR-1 and supporting documentation Applicant billed as follows:

MRI of the Brain Stem w/o contrast CPT Code 70551 \$961.88

MRI of the Brain Stem w/o contrast CPT Code 70551 22 \$350.00

3D rendering w/ interpretation CPT Code 76377 59 \$328.77

MRI head w/o contrast CPT Code 70554 59 \$833.86

MRI spectroscopy CPT Code 76300 \$897.29

MRI Orbit Face & neck w/o contrast CPT Code 70540 \$1,029.96

Total Billed: \$4,401.76; and reduced at the hearing to \$3,558.81.

Respondent contends that there the verifications were not responded to as such it issued a Denial of Benefits on 5/16/2024.

In this case Respondent received the bill on 12/29/2023 and on 1/3/2024 and again on 2/1/2024 Respondent's adjuster Michelle Gobin sent out verification requests and asked that the responses be sent to Allstate Verifications PO Box 660328, Dallas TX 75266-0328 and to call 718-451-7547 if there are any questions. The verifications provided the fax number of 855-219-7494 and the email address of EVerifications@allstate.com.

Applicant offers an Affidavit of Naomi Bacchus, a medical billing specialist with Citimed Complete Medical Care who confirms that verifications requests was sent on 1/3/2024 and on 2/7/2024 Ms. Bacchus faxed to Allstate at 855-219-7494 a response which was the fax number on the verifications. Ms. Bacchus states that there is a transmittal report documenting receipt by Allstate.

Decision:

Having considered the arguments of the parties and having reviewed the evidence herein I find that Applicant responded to the verification requests which were not acknowledged by Respondent. As such, I find that Respondent is unable to establish its 120 Day Defense.

Therefore Applicant's claim is granted with interest from date of filing on consent of Applicant's counsel.

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
	CitiMed Complete Medical Care PC	12/06/23 - 12/06/23	\$4,401.76	\$3,558.81	Awarded: \$3,558.81
Total			\$4,401.76		Awarded: \$3,558.81

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/23/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is payable from 5/23/2024 to date of payment.

C. Attorney's Fees

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

Respondent is directed to pay attorney fees in accordance with No Fault Regulations.

- 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 CT

SS :

County of Fairfield

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

10/22/2024
(Dated)

Teresa Girolamo, Esq.

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:
2c8fd817f90e863149d9d79eac8a0adf

Electronically Signed

Your name: Teresa Girolamo, Esq.
Signed on: 10/22/2024