

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pain Relief Rx. Inc.  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No. 17-24-1350-4201  
Applicant's File No. n/a  
Insurer's Claim File No. 0532185660101012  
NAIC No.

**ARBITRATION AWARD**

I, Corinne Pascariu, 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 10/09/2024  
Declared closed by the arbitrator on 10/09/2024

Jeffrey Datikashvili, Esq. from The Sigalov Firm PLLC participated virtually for the Applicant

Chelsea Waller, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,536.40**, 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

***Background***

Assignor is a male who was thirty-four years old when he was the driver of a motor vehicle involved in an accident on December 24, 2023. He was subsequently prescribed various medications which Applicant dispensed on January 16, 2024. Upon receiving the claims for reimbursement, Respondent timely sought further verification of treatment. Respondent did not deny Applicant's bill, but asserts there is open verification and, accordingly that the claim is not ripe for arbitration. Applicant seeks \$253640 in no-fault reimbursement for the medication provided.

## ***Issue***

Whether the claim is ripe for arbitration.

### **4. Findings, Conclusions, and Basis Therefor**

The case was decided on the submissions of the Parties as contained in the ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the file for both parties and make my decision in reliance thereon.

To receive payment of a claim, Applicant "need only file a 'proof of claim' (11 NYCRR 65.11(k)(3)), and the insurers are obliged to honor it promptly or suffer the statutory penalties." Dermatossian v. New York City Transit Authority, 67 N.Y.2d 219, 224, 501 N.Y.S.2d 784, 787 (1986). However, an insurer is not obligated to pay or deny a claim until it has received verification of all relevant information requested. 11 NYCRR § 65.15 (g) (1) (I); 2 (iii). See Hosp. for Joint Diseases v. New York Cent. Mut. Fire Ins. Co., 2007 NY Slip Op 08038 (App. Div. 2d Dept.); Beta Supply, Inc. v. Government Empls. Ins. Co., 2008 NY Slip Op 51406(U) (App Term 1st Dept., July 16, 2008). Once Respondent receives verification, the time to pay or deny the claim is no longer tolled and it has a duty to act. See, All Health Medical Care, PC v. Geico, 2 Misc.3d 907, 771 NYS2d 832 (Civ. Ct., Queens County 2004).

In the matter at hand Applicant submitted a claim for the medication at issue, an assignment of benefits form and medical records. I find that Applicant established a prima facie case.

### ***Open Verification***

This is one of several cases between Applicant and Respondent involving the same issue, the same requests and the same responses. Each party submitted awards in its favor.

With regard to the claim at hand, following an accident on December 24, 2023, assignor was prescribed various medications which Applicant dispensed on January 16, 2024. Upon receiving the claims for reimbursement, Respondent timely sought further verification of treatment. Respondent did not deny Applicant's bill, but asserts there is open verification and, accordingly that the claim is not ripe for arbitration. Applicant seeks \$2536.40 in no-fault reimbursement for the medication provided.

There is no issue as to timeliness of the requests. Respondent received this bill on February 9, 2024. Upon receiving the claim for reimbursement Respondent issued a verification request on March 1, 2024, seeking responses to specific documents. Applicant responded on April 8, 2024. Respondent followed up with a request on April 17, 2024. It also sent several acknowledgement letters, including one on April 26, 2024.

Respondent's verification requests stem from an EUO of Applicant's manager, Eleanora Mullokandova, that took place on April 7, 2022. Respondent issued post-EUO verification requests seeking responses to twenty-six itemized documents. The parties advise that there has been communication back and forth regarding the requested information.

Applicant submitted partial responses made on September 12, 2022, and October 20, 2022, prior to the date of treatment, wherein they objected to Respondent's remaining six requests on the ground that it is seeking Malella type information, to which it is not entitled. It did not submit a claim specific response to Respondent's request. However, Respondent's acknowledges a partial response on April 8, 2024

Respondent's acknowledgment letters indicate they are seeking the following remaining six items that Applicant objected to. Respondent argued that the following items remained outstanding as is stated in the last request:

1. Dollar amount of capital expenditure used as startup money to set up the pharmacy;
2. Last six months proof of payment of wholesale purchase invoices;
3. Last six months proof of payment of salary (cashed checks front and back);

\*\*\*In your response, you provided 1 earnings statement for Ms. Mullokanodva from August 2022. Please be advised the proof of salary was requested at the time of the EUO in April. Therefore, please provide the 6 months of proof of salary from November 2021-April 2022\*\*\*

4. Last six months proof of payment to Express Rx Delivery (front and back of checks);

\*\*\*In your responses, you provided checks issued to Express Rx Delivery from November, December, May, June, and August. Please be advised the past 6 months of proof of payment to Express Rx Delivery was requested at the EUO in April. Therefore, please provide the cashed checks from January 2022-April 2022\*\*\*

5. Last six months proof of payment to Integrated Solutions for billing (front and back of checks);

\*\*\*In your response, you provided one \$500 check to Integrated Solutions. Please advise if that is the only payment that has been made to Integrated Solutions. Additionally, please provide a copy of the back of the check showing it was cashed\*\*\*

6. Last six months proof of payment to MicroMerchant (front and back of checks).

\*\*\*In your response dated October 20th, 2022, you provided two checks, one in the amount of \$910.00 and the other in the amount of \$436.00. The "Pay to the Order of" section is blank. Please advise who these checks were issued to and what the payments were for\*\*

In support of its defense, Respondent submitted Ms. Mullokanodva's EUO transcript and an SIU affidavit by Daniel Curto dated January 24, 2023.

At the hearing Applicant argued that the claim must be awarded because they substantially complied with the request and timely objected to the outstanding items requested.

### **Finding**

I find in favor of Respondent. The remaining items requested by Respondent and objected to by the Applicant, were valid.

"The regulations do not give the insurer the right to ask an assignee to produce documents relating to the corporate structure or finances of a medical provider. Upon receipt of the completed verification form, the insurer can request additional verification. The regulations only permit the insurer to obtain written information to verify a claim." See Dynamic Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co., 2010 Slip Op 20285 (Dist. Ct. Nassau Co. July 15, 2010) (Emphasis added). See also, Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co., 33 Misc. 3d 1236(A), 941 N.Y.S.2d 536, 2011 N.Y. Slip Op. 52255(U) at 3 (Dist. Ct. Nassau Co. 2011) ("The demand for information relating to a Mallela defense is not obtainable through verification."); Island Chiropractic Testing, P.C. v. Nationwide Ins. Co., 35 Misc. 3d 1235(A), 953 N.Y.S.2d 550 (Dist. Ct. Suffolk Co., C. 2012)("Permitting an insurer to obtain written documents such as tax returns, incorporation agreements or leases regarding a potential fraudulent incorporation 'Malella' defense as part of the verification process defeats the stated policy and purpose of the no-fault law and carries with it the potential for abuse.")

The Court of Appeals, in the case of State Farm Mutual Insurance Co. v. Mallela, N.Y. 3d 313, 794 N.Y.S. 2d 700, in addressing the respondent's right to investigate a provider's license status held that the Superintendent's regulations themselves provide for agency oversight of carriers, and demand that carriers delay the payment of claims to pursue investigations solely for good cause. See 11NCYRR 65-3.2(c): "In the licensing context, carriers will be unable to show 'good cause' unless they can demonstrate behavior tantamount to fraud". Therefore, under Mallela, in order for a Respondent's request for additional verification, such as bank records and tax returns, to inquire as to the Applicant's licensing status, to be valid, the Respondent must "show good cause" by putting forth proof that demonstrates "behavior tantamount to fraud." It is the burden of the respondent to prove that the verification requests are valid (see, A.B. Medical Services PLLC v. Highlands Insurance Co., N.Y.L.J., May 27, 2003 (Civ. Ct. New York Co. 2003, Lucy Billings, J.).

Applicant's assertion that this claim should be awarded because they substantially complied with Respondent's request, applies an incorrect standard. A partial response to an additional request is insufficient. D&R Med. Supply, Inc.v. Clarendon Nat. Ins. Co. (22 Misc 3d 1127[A], 2009 NY Slip Op 50306[U] [Civ Ct, Kings County]). Thus, substantial compliance is inherently insufficient. It is contrary to law to hold that health service provider need only substantially comply with additional verification requests.

American Transit Ins. Co. v. PDA NY Chiropractic, P.C., 2023 N.Y. Slip Op. 50938 (N.Y. Sup. Ct. 2023). An Applicant must fully comply with a request for verification unless the requested verification is unreasonable.

After a thorough review of the record, including the SIU affidavit by Daniel Curto and Ms. Mullokanodva's EUO testimony, I find that Respondent established good cause for the requests and, as such, that they were reasonable. The verification is outstanding, and the claim is premature. It is dismissed without prejudice.

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 VT

SS :

County of Windham

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

10/23/2024  
(Dated)

Corinne Pascariu

**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:**  
cf911a7fefab8e4582a484de5ee2df24

### Electronically Signed

Your name: Corinne Pascariu  
Signed on: 10/23/2024