

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Five Star Rx. Inc.  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-23-1323-0016
Applicant's File No.	154.958
Insurer's Claim File No.	8713387690000001
NAIC No.	22055

### ARBITRATION AWARD

I, Anne Malone, 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: EIP

1. Hearing(s) held on 10/04/2024  
Declared closed by the arbitrator on 10/04/2024

Vincent Ku, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Samantha Bibbo, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,116.70**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$1,704.85 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

The 34 EIP reported involvement in a motor vehicle accident on December 4, 2021; reported injury and received Lidocaine ointment and Naproxen provided by the applicant on December 17, 2021.

The applicant submitted a claim for this prescription medication, payment of which was delayed pending the EUO of the applicant and response to post-EUO requests for documents and information submitted after the EUO was completed. It was subsequently timely denied after 120 days from the date of the original request for documents/information after the EUO of the applicant was completed.

The post-EUO requests were for documents and information related to this claim and to the business practices of the applicant.

**The issue to be determined at the hearing is whether the respondent's denial is proper.**

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

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

If an insurer requires any additional information/documents to evaluate the proof of claim after the EUO of the applicant is completed; such request must be made timely in order to toll the 30 day period to pay or deny the claim. See 11 NYCRR 65-3.5(b); See also New York Hosp. Med. Ctr. of Queens v. Allstate Ins. Co., 2014 NY Slip Op 00640 (2d Dept. 2014.)

Therefore, when a no-fault medical service provider fails to respond to post-EUO requests for documents/information, the claim is premature and should be denied without prejudice.

The parties have a duty to communicate with each other. The purpose of the No-Fault statute is to ensure prompt resolution of claims submitted by parties injured in motor vehicle accidents. The parties' obligations are centered on good faith and common sense. Any questions concerning a communication should be addressed by further communication, not inaction. Dilon Medical Supply Corp. v. Travelers Ins. Co., 7 Misc.3d 927, 796 N.Y.S.2d 872 (Civ. Ct. Kings Co. 2005.)

The response to a post-EUO request that is "arguably responsive" places the burden to take further action upon the respondent. All Health Medical Care, P.C. v. GEICO, 2 Misc.3d 907 (N.Y. City Civ. Ct. 2004.) Moreover, as long as applicant's documentation is "arguably responsive" to an insurer's post-EUO request for documents/information, the insurer must act affirmatively once it

receives a response to its post-EUO request. Media Neurology, P.C. v. Countrywide Ins. Co., 21 Misc.3d 1101 (N.Y. City Civ. Ct. 2005.)

The applicant contends that it is not required to respond to the post-EUO requests based on 11 NYCRR 65-3.5(o) which it argued does not pertain to requests for examinations under oath. However, 11 NYCRR 65-3.5(p) states "[w]ith respect to a verification request and notice.... "an insurer's failure to comply with a prescribed time frame, shall not negate an applicant's obligation to respond to the request or notice. This subdivision shall apply to medical services rendered, and to lost earnings and other reasonable and necessary expenses incurred, on or after April 1, 2013."

In this matter, the post-EUO requests were for documents and information related to an SIU affidavit and/or the testimony of a witness on behalf of the applicant. The requests for this discovery are not related to the 120 day denial pursuant to 11 NYCRR §65-3.5(o) but do require a response from the applicant.

In the instant case, respondent issued timely requests for a witness on behalf of the applicant to appear at an EUO. The applicant complied and a witness on its behalf attended. Following the EUO of applicant, respondent issued timely requests for post-EUO information/documents.

However, since the post EUO requests were necessary for the respondent to verify this claim, they are governed by 11 NYCRR 65-3.5(b); See also New York Hosp. Med. Ctr. of Queens v. Allstate Ins. Co., 2014 NY Slip Op 00640 (2d Dept. 2014.)

In Island Life Chiropractic, PC v Travelers Ins.Co. 64 Misc. 3d 143(A), 117 N.Y.S.3d 428 (App Term 2d Dept. 2019) the court held that "Where a no-fault insurer is relying on the defense that an action is premature because verification is outstanding, it is the defendant insurer's prima facie burden at trial to demonstrate (1) that verification requests were timely mailed and that the defendant did not receive the requested verification. (see 11 NYCRR 65-3.8[a]; Right Aid Medical Supply Corp. v State Farm Mut. Auto Ins. Co., 58 Misc 3d 140(A), 94 N.Y.S.3d 540 NY Slip OP 51875[U] (App Term 2d Dept, 2d, 11<sup>th</sup> & 13<sup>th</sup> Jud Dists (2017.)

In the instant matter, the respondent did not submit proof of mailing of the verification requests and did not submit evidence from someone with personal knowledge that a response was not received from the applicant.

Under these circumstances, the respondent failed to establish that the claim is premature and therefore, the time to pay or deny this bill is not tolled.

Based on the foregoing, the respondent has failed to establish its 120 day defense and its denial was improper.

**Accordingly, the applicant is awarded \$1,704.85 in disposition of this claim.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently 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
	<b>Five Star Rx. Inc.</b>	<b>12/17/21 - 12/17/21</b>	<b>\$2,116.70</b>	<b>\$1,704.85</b>	<b>Awarded: \$1,704.85</b>
<b>Total</b>			<b>\$2,116.70</b>		<b>Awarded: \$1,704.85</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/27/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30<sup>th</sup> day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 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 CT

SS :

County of Fairfield

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

10/24/2024  
(Dated)

Anne Malone

### **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:**  
44dacc43184243479b58334567285c6d

**Electronically Signed**

Your name: Anne Malone  
Signed on: 10/24/2024