American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Surgery Center, LLC (Applicant)	AAA Case No.	17-24-1337-8149
	Applicant's File No.	RFA23-326958
- and -	Insurer's Claim File No.	0680384112-2GO
Allstate Fire & Casualty Insurance Company (Respondent)	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: J.S.

1. Hearing(s) held on 10/28/2024
   Declared closed by the arbitrator on 10/28/2024

   Alexander Mun, Esq. from The Russell Friedman Law Group participated virtually for the Applicant

   Juliya Khodik, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$8,622.64**, 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 there is outstanding verification and as such this matter is not ripe for Arbitration?

   Whether the correct fee schedule is $3,026.24 based upon Respondent's Coder Affidavit.

4. Findings, Conclusions, and Basis Therefor

Both Applicant and Respondent each submitted evidence in support of their contentions. This decision is based on my review of that file, as well as the arguments of the parties at the hearing. The parties appeared via ZOOM.

Legal Analysis:

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.YS.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 C as. 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 there is one bill for date of service of 10/27/2022. The bill was sent to Allstate Insurance Co., NY, P.O. Box 2874, Clinton, IA 52733. The creation date is 11/17/2022.

Respondent confirms receipt on 11/18/2022. On 12/2/2022 and again on 1/3/2023 Respondent's claims adjuster Rosa Correa sent out timely verifications and asked that the responses be sent to Allstate Verification, P.O. Box 660328, Dallas TX 75226-0328 *FF section.

Applicant's original submissions contains copies of the verification requests. Applicant offers a response dated 1/28/2023 which was correctly sent to the Dallas address and which was for the date of service of 10/27/2022. Proof of mailing is dated 1/30/2023.

Respondent states that it received the response and sent a follow up by outside Counsel Short & Billy, PC. dated 3/8/2023. This request would be timely.

Applicant argues that its response was in compliance and no further response was necessary with respect to Counsel's letter dated 3/8/2023.

However, when one reads the letter by Short & Billy is quite specific as to the requested verifications, the responses, and the short comings of particular responses.

As such Respondent contends that this matter is not ripe for Arbitration.

Decision:

In the matter of *American Transit co. v. Pda NY 2023* NYLJ Lexis 2380, same is a Supreme Court of NY Kings County decision published on 9/11/2023. In that case American Transit filed an Article 75 proceeding, seeking an Order and Judgment vacating a No-Fault insurance master arbitration award that affirmed the arbitration award of another arbitrator. The matter came before Justice Aaron D. Maslow. In that matter Petitioner American Transit commenced an Article 75 proceeding seeking an order to vacate a master arbitration award of Victor J. Hershdorfer, Esq. which affirmed the arbitration award of John Kannengieser, Esq.

At page 7/16 of the decision, there is the issue of "substantial compliance", to which the issue of an alleged substantial compliance is not correct as a matter of law. At

page 8/16 of the decision, American transit argues that it was "not required to pay or deny the claim after its receipt of a partial response. See New Horizon Surgical Ctr LLC v. Travelers Ins. Co. 2019 NY Slip Op. 51690(U) (App. Term 2d Dept. 2019).

Judge Arron Maslow, starting at page 11/16 of the decision and continuing: "This Court concludes otherwise with regard to the additional verification issue, which impacted five bills, the dates of service being February 19, 2020-February 28, 2020; March 2, 2020-March 23, 2020; [*29] May 4, 2020-May 28, 2020; June 1, 2020-June 30, 2020; and July 1, 2020-July 30, 2020…. The **No-Fault program "stresses the justifying of claims**" (Nyack Hosp. v. General Motors Acceptance Corp., 8 NY3d 294, 300 [2007]). Information sought as additional verification is not necessarily that which can be found on the prescribed verification forms "**but any information that the carrier finds necessary to properly review and process the claim**" (Westchester Med. Ctr. v. Travelers Prop. & Cas. Ins. Co., 2001 N.Y. Slip Op. 50082 [U] *3 [Sup Ct, Nassau County 2001])…."The insurer is **entitled to receive all items necessary to verify the claim** directly from the parties from whom such verification was requested" (11 NYCRR 3.5 [c] [emphasis added]). "A claim need not be paid or denied until **all demanded verification is provided**" (Westchester County Med. Ctr. v. New York Cent. Mut. Fire Ins. Co., 262 AD2d 553, 554 [2d Dept 1999] [emphasis added]); accord New York & Presbyt. Hosp. v. Progressive Cas. Ins. Co., 5 AD3d 568 [2d Dept 2004])…. I**t is manifest that an insurer [*31] is not required to pay or deny a claim upon receipt of a partial response to a verification request** (see Chapa Products Corp. v. MVAIC, 66 Misc 3d 16 [App Term, 2d, 11th & 13th Dists 2019]; New Horizon Surgical Ctr., LLC v. Travelers Ins. Co., 65 Misc 3d 139[A], 2019 NY Slip Op 51690[U] [App Term, 2d, 11th & 13th Dists 2019]; Compas Med., P.C. v. Travelers Ins. Co., 53 Misc.3d 136[A], 2016 NY Slip Op 51441[U] [App Term, 2d, 11th & 13th Dists 2016])… Therefore**, it is contrary to law to hold that a health service provider need only "substantially comply" with additional verification requests**. The hearing arbitrator's determination was contrary to established law as provided in the No-Fault Regulations at 11 NYCRR 3.5 [c] and in case law recited herein, rendering it arbitrary, capricious, and irrational (see Matter of Petrofsky, 54 NY2d 207). **In No-Fault insurance law, there is no concept of "substantial compliance**" with an insurer's additional verification requests; partial compliance simply does not suffice. PDA was required by law to [*32] provide the sign-in sheets and ATIC was also entitled to await Assignor's provision of information as to whether he was eligible for the livery fund's Workers' Compensation benefits instead of No-Fault insurance…. (emphasis added).

Furthermore, Judge Aaron Maslow, held: When the master arbitrator wrote, "**The arbitrator's determination that the applicant had substantially complied with the verification requests is not incorrect as a matter of law**" (NYSCEF Doc No. 4, Master Arbitration Award at 3), this confirmed an erroneous standard of compliance with additional verification requests. This master arbitration finding was erroneous as a matter of law contrary to the No-Fault Regulations at 11 NYCRR 3.5 [c] and the case law recited herein and rose to the level of being so irrational as to

require vacatur (see Matter of Smith, 55 NY2d 224, 232 ("the courts are limited in their further review of the master arbitrator's resolution of that error of law, since we generally will not vacate an arbitrator's award where the error claimed is the incorrect application of a rule of substantive law...unless is it so irrational as to require vacatur"); *Matter of Acuhealth Acupuncture, PC,* 170 AD3d 1168; *Matter of Acuhealth Acupuncture, P.C.,* 167 AD3d 869; *Matter of Acuhealth Acupuncture, P.C.,* 149 AD3d 828; Matter of Health & Endurance Med., P.C. v. Deerbrook Ins. Co., 44 AD3d 857 [2d Dept 2007]).

Having considered the arguments of the parties and having reviewed the evidence herein, I find that Respondent has established that there were still outstanding items of verification necessary to process this claim, as such, irrespective of any contention of "substantial compliance", the items necessary would be relevant to ascertain whether or not Applicant is entitled to reimbursement under the No Fault Rules and regulations. As such Applicant's claim 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 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.

10/29/2024
(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:
998dba2d1fe4d6ed2b850341a55975bc

Electronically Signed

Your name: Teresa Girolamo, Esq.
Signed on: 10/29/2024