

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

AV Chemist LLC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-23-1314-0760
Applicant's File No.	RFA23-320066
Insurer's Claim File No.	0281082650101017
NAIC No.	35882

### ARBITRATION AWARD

I, Bonnie Link, 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: the EIP

1. Hearing(s) held on 10/14/2024  
Declared closed by the arbitrator on 10/14/2024

Helen Feingersh, Esq. from Horn Wright, LLP participated virtually for the Applicant

Dominic Pesce, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$725.33**, 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

This arbitration arises out of treatment of a 61-year-old male for injuries sustained in a motor vehicle accident that occurred on August 12, 2022. Applicant seeks reimbursement in the amount of \$725.33 for prescriptions for medications dispensed on December 6, 2022. The Respondent denied the claims on May 22, 2023, on the basis that the Applicant failed to provide sought after verification within 120 days.

4. Findings, Conclusions, and Basis Therefor

This matter is determined after reviewing the documents contained in the electronic case folder at the closing of the file and the presentations of the parties' representatives. There

were no witnesses. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon. To the extent that the issues determined herein were not raised by the parties, "the arbitrator may . . . independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 NYCRR 65- 4.5(o)(1).

The arbitration hearing was conducted via ZOOM and all parties appeared.

It is well settled that an applicant establishes its prima facie entitlement to payment by proving it submitted a claim setting forth the facts and the amount of the loss sustained and that payment of no-fault benefits were overdue (see Insurance Law § 5106[a]; *Mary Immaculate Hospital v Allstate Ins. Co.* 5 A.D.3d. 742 Second Dep't 2004. A prima facie case has been established herein.

The EIP was the driver of the automobile. He came under the care of Dr. Anjani Sinha who prescribed aspirin, antibiotic ointment and naproxen on December 5, 2022. The Respondent acknowledged that it received the bill on December 16, 2022. It issued a first verification request on January 12, 2023, and a follow up on February 17, 2023. It denied the bill on May 22, 2023 on the grounds that the Applicant did not provide a timely and sufficient verification response.

There has been continuing conflict between the parties well before the instant services were rendered and there have been numerous prior arbitration awards for each party. The basic source of the conflict is post EUO verification wherein the Respondent is attempting to obtain information regarding the Applicant's business practices as well as the providers who, it is argued, prescribe the same medications to patients pursuant to a plan or scheme between them and the Applicant.

Prior to the receipt of these bills, the Respondent conducted an Examination Under Oath of AV Chemists LLC by its owner, Danny Nektaov on March 8, 2022.

The Respondent's submission includes the bills and its subsequent verification requests. It also submitted an Affidavit by its SIU investigator, Lynette Stone, who states that the Applicant, as well as the medical practices that prescribe the lion's share of prescriptions for the same medications, are being investigated for fraudulent business practices.

Ms. Stone asserts that at his Examination Under Oath, Mr. Nektaov gave either contradictory or incomplete responses to certain questions. He testified that he has one partner but appeared to be surprisingly unfamiliar or unaware of the practices in his own company, which operates a storefront pharmacy in Queens, New York. A central question is whether the pharmacy is actually controlled by others in contravention of NYS's No-Fault Regulations. While there are some documents requested that are not within the Applicant's control, such as letters of medical necessity from the prescribing facilities, much of the documentation is within its control, such as wholesale invoices and written agreements and financial arrangements between the Applicant and other companies he either owns or in which he has a financial interest.

The Applicant submitted a lengthy response to the Respondent's post-EUO verification, dated July 13, 2022, with a significant number of documents attached, which the Applicant intended to put an end to its verification obligations, if any, up until that date, and going forward. The Applicant argued that it responded to every request, either by supplying documentation, stating that no such document existed, or making what it considered to be legitimate objections based on the request being irrelevant, vague or overbroad.

The July 13, 2022 verification "package" obviously pre-dates the within treatment, bills and requests. The Respondent argued initially that the Applicant is not entitled to pick and choose what information to provide, so long as it is making a legitimate inquiry.

The Respondent argues that it is entitled to verify each claim and to supplement its verification requests when new information comes to light.

The Applicant argued that the Respondent's requests are repetitive because they are issued for each bill, that the Respondent had no right under the Regulations to supplement its requests after its first post-EUO verification was issued and, that the Respondent should have requested at least some of the verification sooner than it did. The Applicant argued that once its verification response was issued, the Respondent should pay or deny claims that were outstanding up to that point and then, presumably, use the information for any future claims for which the same or similar verification requests are made.

The Respondent argued that the July 13, 2022 "package" of responses mentioned people or entities that the witness did not mention in his EUO, and so they were unaware of these people or entities at the time it issued its earlier verification requests. As an example of the testimony that the Respondent argued raised additional inquiries, were the inconsistencies between the EUO and the documentation provided. For instance, Mr. Nektaov had not mentioned DN Spark Consulting during his testimony, however, there was an indication in the paperwork provided on July 13, 2022 that the Applicant is making loan payments to an entity, DN Spark Consulting, which appeared to have made a rather large, multi-six-figure loan to the Applicant. The Respondent then stated that it then added a request for copies of all contracts, loan applications, terms, emails, payments or any other correspondence with respect to the loan taken by AV Chemist from DN Spark Consulting Inc. as shown in the repayment produced by AV Chemist on bates stamped page 1,690 showing a check from AV Chemist to DN Spark Consulting in the amount of \$45,000.00 for a "loan return/balance \$355,000.00".

While GEICO acknowledges receipt of invoices with respect to the above request: (i) the alleged proof of payments fail to correlate to the submitted invoices and it is impossible for GEICO to verify payment of the submitted invoices in the fashion proof of payment was produced; and (ii) proof of payment has not been provided for Amerisource Bergen Drug Corp, Innovida Pharmaceutique corporation or Real Value Products Corp.

It issued the above-referenced follow-up, and, to date, the Applicant has not replied. In prior matters involving the same or similar verification requests, the undersigned has found that

*... the Applicant simply chose to completely disregard the Respondent's requests, even when the Respondent laid the foundation for the legitimacy of the request. I find this to be in contravention of its obligation to provide requested verification.*

*There is a growing body of case law that stresses pro-action, and not inaction, by both a No-Fault carrier and a healthcare provider, that both should be proactive, not inactive in resolving issues relative to a carrier's verification requests and/or a healthcare provider's responses thereto. Westchester Med. Ctr. v. New York Cent. Mut. Fire Ins. Co., 262 AD 2d 553, 692 N.Y.S. 2d 665 (App Div, 2nd Dept - 1999); Urban Radiology PC v. Tri-State Consumer Ins. Co., 2010 N.Y. Slip Op 50987(U), 27 Misc 3d 140(A) (App Term, 2nd Dept - 2010), and; All Health Medical Care PC v. GEICO, 2 Misc 3d, 907, 771 N.Y.S. 2d 832 (Civ. Ct., Queens County - 2004).*

*Neither side can sit idly by and ignoring the other's correspondence, as that does not, in this Arbitrator's view, serve one of the primary goals of the No-Fault system, to wit, the prompt adjudication of claims. Such conduct also unfortunately results in the preclusion of any argument by the Applicant relative to the validity of the verification requests in issue. Crescent Radiology, PLLC v. American Tr. Ins. Co., 2011 NY Slip Op 50622(U), (App Term, 2nd Dept - 2011). A party may not ignore communications from the other without risking its chance to prevail in the matter citing Westchester County Medical Center v. New York Central Mutual Insurance Company, 262 A.D.2d 553, 692 N.Y.S.2d 665 (2nd Dept, 1999).*

*The Applicant has, thus far, failed or refused to supplement its July 13, 2022 omnibus verification response. It argued that it has "substantially complied" with the Respondent's requests and that therefore, this arbitration should move forward to an Award in its favor. AV Chemists v. GEICO, AAA Case # 172212574773 (Marianne C. Zack, 10/11/23).*

*I do not agree that "substantial compliance" is necessarily acceptable (if a request is otherwise proper, relevant and timely). Under 11 NYCRR 3.5 an insurer has a right to request and receive any verification it deems relevant to the processing of a claim. The Regulations do not say that "substantial compliance" is sufficient. Rather they say that an insurer is entitled to receive "all" information reasonably requested.*

*In a prior matter before me involving these same parties, AV Chemist LLC and Geico Insurance Company, AAA Case No. 172313012080, I found similarly and upheld the denial of the claim.*

*The Applicant argued that in another AV Chemist award, AAA Case #172313013672, I found that the Respondent had to prove mailing of its requests and that it did so only on the date of the hearing. The Applicant argued that it was*

*prejudiced by the late submission. The Respondent argued that the same issues had been previously arbitrated and that there could be no prejudice to the Applicant. Based on the circumstances in that matter, I found for the Applicant on the grounds that along with its proof of mailing, the Respondent had submitted most of its documentation late and that it should have been able to do so timely.*

*Here, the arbitration was commenced on August 30, 2023, and again, most of the Respondent's submission was submitted late, including the mailing affidavit by Anjelica Walsh, dated and submitted on March 19, 2024.*

*This hearing was initially scheduled for March 12, 2024. At that time, the Respondent's claims representative requested that the hearing be rescheduled in order to "hire outside counsel and forward their file to them." The hearing was rescheduled to April 2, 2024. Both parties submitted prior arbitration awards in their favor. The Respondent submitted evidence on March 19, 2024. It had not asked, nor received permission to submit additional evidence during the period of time between the initial hearing date and the new hearing date. Apparently, the Respondent did not even have Ms. Walsh's affidavit until after the initial hearing. As I have found before, the Respondent's proof of mailing that it uses in these matters is predominantly formulaic and requires very little information to suit each individual matter. The Respondent had ample time and ample notice to submit its proof and did not do so.*

*I find that the Respondent's failure to timely submit its affidavit of mailing is fatal to its defense. In *Island Life Chiropractic, P.C. v. Travelers Ins. Co.*, 2019 NY Slip Op 51273(U) (App. Term 2d, 11th and 13th Jud. Dists. 2019), the Court expressed in pertinent part: "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 (2) that the defendant did not receive the requested verification.*

*Accordingly, this claim is granted.*

Here, in the instant matter, the arbitration was filed on August 30, 2023 and the bulk of the relevant part of the Respondent's submission was uploaded between September 12, 2024 and October 14, 2024, the date of the hearing. Ms. Stone's affidavit was timely uploaded on October 3, 2023. It was re-uploaded in September 2024. The mailing affidavit by Adam Akiwowo, dated September 19, 2024, was uploaded on September 19, 2024. The Respondent points out that this is only slightly less than a month before the hearing.

I am compelled to find again that the Respondent's proof is late and that prejudice to the Applicant is not the sole consideration. In the interest of fairness and adherence to the rules and regulations by which the system runs, I find that the Respondent failed to timely submit sufficient proof of the outstanding verification. Accordingly, the Applicant's claims are granted.

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
	AV Chemist LLC	12/06/22 - 12/06/22	\$725.33	Awarded: \$725.33
<b>Total</b>			<b>\$725.33</b>	<b>Awarded: \$725.33</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/30/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The denials in this matter being timely issued, the Respondent shall pay the Applicant interest on the amount of first-party benefits awarded, computed from date of filing, to the date payment is made at a rate of 2% per month, simple interest (i.e., not compounded) using a 30 day month, 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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 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 NY  
SS :  
County of Nassau

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

11/12/2024  
(Dated)

Bonnie Link

### **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:**  
5a0f615a4a9011a620ca47dcaa673ca4

**Electronically Signed**

Your name: Bonnie Link  
Signed on: 11/12/2024