

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Refua Rx Inc.
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1351-8841

Applicant's File No. GM23-720745
GM23-720806

Insurer's Claim File No. 32-49P4-03Q

NAIC No. 25178

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: E.R

1. Hearing(s) held on 11/18/2024
Declared closed by the arbitrator on 11/18/2024

John Ferris, Esq. from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

Chris Mango, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$381.36**, 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 Applicant's bills for date of service of 8/16/2023 were properly denied based upon the 120 Day Rule?

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: Outstanding Verification

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).

In the case of American Transit co. v. Pda NY 2023 NYLJ Lexis 2380, which is a Supreme Court of NY Kings County decision published on 9/11/2023, 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]).... It 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]).

Legal Analysis: 120 Day Rule:

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 E.R. was reportedly involved in a motor vehicle accident on 5/5/2023. Applicant filed for Arbitration on 6/13/2024 seeking \$381.36 for date of service of 8/16/2023. In this case there are three bills for the same date of service.

Bill 1: \$25.20 DOS 8/16/2023 Oxycodone

Bill 2: \$116.40 DOS 8/16/2023 meloxicam

Bill 3: \$239.76 DOS 8/16/2023 ondansetron Hydro

All three bills were received on 10/3/2023. For each of the bills, Respondent issued verifications and contend that as there was outstanding verification which was not complied with a timely denial of benefits based upon the 120 Day Rule.

For bill 1, the final verification was issued on 11/14/2023 and denied on 2/21/2024. Applicant was advised that:

Pursuant to 11 NYCRR 65-3.5(o) REFUA RX INC has failed to submit verification documentation requested on October 13, 2023 & November 14, 2023 for the referenced claims within the prescribed 120 day period, therefore, benefits are denied. Unless otherwise noted, all fees should be in accordance with the medical fee schedule as per the rules and regulations authorized by the State of New York, Department of Insurance, 28.

For bill 2, the final verification was issued on 11/14/2023 and the bill was denied on 2/12/2024. Applicant was advised:

Pursuant to 11 NYCRR 65-3.5(o) REFUA RX INC has failed to submit verification documentation requested on October 13, 2023 & November 14, 2023 for the referenced claims within the prescribed 120 day period, therefore, benefits are denied. Unless otherwise noted, all fees should be in accordance with the medical fee schedule as per the rules and regulations authorized by the State of New York, Department of Insurance, 28.

For bill 3, the final verification was issued on 11/21/2023 and the bill was denied on 2/21/2024. Applicant was advised as follows:

Pursuant to 11 NYCRR 65-3.5(o) Refua Rx Inc, has failed to submit verification documentation requested on October 18, 2023 and November 21, 2023 for the referenced claims within the prescribed 120 day period, therefore, benefits are denied. Unless otherwise noted, all fees should be in accordance with the medical fee schedule as per the rules and regulations authorized by the State of New York, Department of Insurance, 28 Amendment to Regulation No. 83.

In this case Respondent contends that there was an EUO of Yuri Kandinov, held on 3/23/2023 and that there were verifications issued post EUO.

Each of the verifications in this case were sent to Applicant requested the following:

1. All Documents relating to the income and expenses of Refua Rx, including, but not limited to, bank statements, canceled checks (front and back), deposit records, electronic transfer records, and general ledgers, for the time period of August 2022 to the present;
2. Quarterly payroll tax returns (IRS Form 941 and NYS Form 45), including all attachments and schedules, for the time period of August 2022 to the present;
3. Identify the number of Lidocaine 5% Ointment prescriptions dispensed by Refua Rx each month from August 2022 to the present to patients with (i) Medicare/Medicaid; (ii) private medical insurance, and (iii) workers' compensation insurance.
4. All publications, articles, studies or other materials that discuss the efficacy of topical lidocaine 5%; and
5. All publications, articles, studies or other materials that discuss the efficacy of topical diclofenac 3%.

At the time of the Arbitration Applicant states that there was a specific response dated 12/5/2023 that was sent to Respondent. A copy of same is at page 24/64 of the original submissions. At page 24/64 is a response regarding date of loss of 5/5/2023, DOS of 8/16/2023 and file no GM23-720745 with the billed amount of \$239.76. The response states that the verifications are not post EUO as the EUO was not conducted regarding this claimant.

Next, the letter state, that the verification is "nothing more than a fishing expedition" . The letter next states that "Please note that the verification in this and your numerous

other duplicative request has already been provided objective withdrawn and or you are advised that we are not in possession of the information all relevant verification requests have been previously provided yet you continue to improperly request the same information."

The letter advises Respondent that the letter is defective as it failed to provide the date of loss. As such Applicant argues that the such defect fails to toll the time to pay or deny the claim. See Victory Med. Diagnostics PC v. Nationwide Prog. & Cas. Ins. Co., 36 Misc 3rd 658 (Nassau Dist. Ct. 2012); Liberty Mutual Inc. Co. v. Branch Med. PC 2016 NY Slip Op 31706(U).

In looking back at the letters there is no date of loss, there is no amount of the bill in dispute, there is no name of the injured party. There is a designation to Refua RX of 101323V04 and to Las offices of Gabriel & Moroff PC of 101323SV05.

However what Applicant failed to note is the Appendix to each of the letters which lists E. R. for date of service of 8/16/2022 for the bills of \$25.20 and \$116.40 for the 10/13/2023 letter; and for the 10/18/2023 letter lists the date of service of 8/16/2022 for ER in the amount of \$239.76. The same holds true for all of the letters issued with are accompanied with an Appendix.

In this case Respondent offers an Affirmation of Anne Mania, an employee with Respondent's SIU Department regarding a review and analysis of claims submitted to State Farm by Applicant Refua RX. Ms. Anna Mania raises concerns regarding who is really supervising the pharmacy as there have had 4 supervising pharmacist in 4 years. Next, Lidocaine 5% an Diclofenac Sodium Gel 3% makes up the majority of the total billed to respondent with these two medications making up of almost 60% of the total pharmaceuticals dispensed by Applicant. This Anne Mania states raises the concerns as to if it is dispensing pharmaceuticals pursuant to "predetermined prescribed protocols and improper financial arrangements designed to maximum billing for these two particular pharmaceuticals."

At paragraph 9, Ms. Mania, states, that its investigation raised concerns regarding applicants relationship with prescribed physicians where many of the referring physicians to applicant we're connected with Macintosh Medical, Atlantic Medical and Jonathan Landau MD. who are the subject of an Eastern District case, GEICO v Jonathan Landow, M.D, et al, docket No. 21-CV-1440 where it is claimed that there is a fraudulent scheme to defraud.

At paragraph 11, Ms. Mania is the question as to if Refua Rx is a "local neighborhood pharmacy", then why are virtually none of the prescriptions dispensed to its local community. (see paragraph 11 for full details.)

Paragraphs 12 through 14 discusses the EUO and the post verification request which were generated immediately thereafter following.

In this case the specific verifications are generated with respect to these specific bills but the basis for the request stems from the EUO testimony and the specific verification are both necessary and reasonable as same are needed to verify the claims herein.

Decision:

Having considered the arguments of the parties and having carefully reviewed the evidence I find that as the verification letters were accompanied by an Appendix of the listed claims, that the verifications are NOT defective despite the cover letter not having a date of service or any individual information as the Appendix satisfies any concerns for which claims the verifications were sought.

Next, I do not find the "response" responsive. As such, I find that Respondent was well within its rights to issued the Denial of Benefits based upon the 120 Day Rule. Therefore, Applicant's claim is denied.

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 DENIED in its entirety

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.

12/13/2024
(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:
470e4b29bbe28f8bb6410756166fa800

Electronically Signed

Your name: Teresa Girolamo, Esq.
Signed on: 12/13/2024