American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Refua Rx Inc. (Applicant)	AAA Case No.	17-24-1352-8748
	Applicant's File No.	GM24-790000, GM24-790025
- and -	Insurer's Claim File No.	3257D091X
State Farm Mutual Automobile Insurance Company (Respondent)	NAIC No.	25178

ARBITRATION AWARD

I, Fred Lutzen, 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 or "Assignor"

1. Hearing(s) held on 12/17/2024
   Declared closed by the arbitrator on 12/17/2024

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

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

2. The amount claimed in the Arbitration Request, **$1,126.98**, 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 male EIP (first initial "L") was 31-years-old when he was injured in an automobile accident on 9/21/2023. He was subsequently prescribed and provided Naproxen-Esomeprazole tablets ($1,077.30), Oxycodone-APAP 5mg/325mg tablets ($10.08), and Cefadroxil capsules ($39.60) on 2/7/2024. Applicant seeks reimbursement of $1,126.98 for these Rx medications dispensed on 2/7/2024.

Respondent contends that the claims were not ripe for arbitration when this matter was commenced on 6/20/2024 due to outstanding requests for additional verification and that it properly denied the claims after arbitration was commenced based on the so-called "120-Day Rule" for failure to provide the requested additional verification.

The issues to be determined are (1) whether Respondent properly denied Applicant's claims based on the 120-Day Rule for Applicant's purported failure to comply with the requests for additional verification and/or whether Applicant objected and/or sufficiently responded, (2) whether the claims are ripe for arbitration, and (3) whether the charges are within fee schedule allowances.

4. Findings, Conclusions, and Basis Therefor

This case was decided based on prevailing law, the submissions of the parties as contained in the electronic file ["MODRIA"] maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no live witnesses.

Unless the parties' agreement provides otherwise, arbitrators need not apply the rules of evidence, are not bound by principles of substantive law, may do justice as they see it, and may apply their own sense of law and equity to the facts as they find them to be. Matter of New Century Acupuncture, P.C. v. Country Wide Ins. Co., 48 Misc.3d 1201(A), 18 N.Y.S.3d 580 (Table), 2015 N.Y. Slip Op. 50919(U) at 2, 2015 WL 3821534 (Dist. Ct. Suffolk Co., C. Stephen Hackeling, J., June 18, 2015); see also, *Rules for Arbitration of No-Fault Disputes in the State of New York*; Effective August 16, 2013, [p](1), "The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary." https://nysinsurance.adr.org

The parties shall be made aware of my view on presumption of mailing issues. Consistent with prior decisions, except for initial billing (prima facie issues), I consider all pre-arbitration correspondence, *between the parties,* for which copies have been submitted to MODRIA with the parties' *original arbitration submissions* or within the initial timeframe set by AAA, to have been delivered to the other side absent a denial of receipt. Delivery or mailing of other items will be considered on a case-by-case basis. I do not presume delivery of items that were allegedly delivered to third-parties or the IP/Assignor unless the IP/Assignor is a non-assignee party to the case and has MODRIA access. This presumption applies to requests for additional verification and responses to verification requests (between parties) and benefits both sides equally with the relaxed rules of evidence for arbitration proceedings.

Verification Requests and Background

There are three (3) separate bills at issue. Respondent issued '120-Day' denials for each bill.

Both parties included in their MODRIA submissions copies of Respondent's request letters, dated 4/4/2024 and 4/9/2024 (first requests), Applicant's objection letter(s), dated 4/24/2024, Respondent's request letters, dated 5/8/2024 and 5/10/2024 (second requests), and Applicant objection letter(s), dated 6/12/2024.

Application commenced arbitration on 6/20/2024.

The requests for additional verification in this case follow an Examination Under Oath that was conducted on 3/23/2023, which was before the subject accident happened and more than 10-months before the subject date of service.

Bill#1 ($1,077.30) and Bill#2 ($10.08) were received by Respondent on 3/26/2024. On 4/4/2024, Respondent sent a request for additional verification related to these two bills and dozens of others. The Appendix annexed to this request lists these two bills, with the dates of service, EIP's name, and billed amounts for each bill. The request letter informs Applicant that there are items requested "to properly evaluate the claims you have submitted" and states further, "Please be advised that pursuant to 11 N.Y.C.R.R. §65-3.5(o), State Farm may deny the charges you have submitted if you do not provide all of the documents identified above that are within your control and/or possession or written proof providing reasonable justification for the failure to comply within 120 calendar days from the date of the initial verification request."

Respondent sent a virtually identical request on 4/9/2024 regarding Bill#3 ($39.60), which was received by Respondent on 3/27/2024.

The items requested include:

> [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%.

On 4/24/2024, Applicant's counsel wrote to Respondent regarding Bills #1 and #2, and separately regarding Bill#3, stating in part:

> Your letter states there was an EUO of the provider on March 23, 2023. Although this is true, this claim was not a part of the EUO, therefore your claim that these are "post euo" document request is inaccurate. We have already provided your attorney with documents or objections for all request numerous times. Therefore, your verification does not toll your time to pay or deny the claims.

First, there is no evidence in MODRIA supporting that Applicant provided any of the items listed above [1 through 5]. Second, Respondent's request letters do not reference an EUO being completed or state that the requests are "post euo" requests. Although, it is true that these requests were issued more than 10-months following the completion of the provider's EUO on 3/23/2023.

Given the items sought were not provided but rather are the subject of Applicant's objections, the issue is whether these objections were reasonable and/or whether the Respondent's requests were reasonable.

The obligation to pay or deny a claim is not triggered until the insurer has received all of the relevant information that was requested. Hospital for Joint Diseases v. State Farm Mut. Auto. Ins. Co., 8 AD3d 533, 2004 NY Slip Op 05413 (App. Div., 2nd Dept., 2004).

"If the provider objects to the request for verification, then the issue of whether the requested verification material and the objection were proper are preserved and become questions of fact for the trier of fact. If the insurer can establish it had a reasonable, good faith, factual basis for requesting the verification, then the failure of the claimant provider to furnish the material will result in the dismissal of the action. If the insurer cannot establish a reasonable, good faith, factual basis for requesting the verification, then the insurer will be required to pay the claim." Victory Medical Diagnostics, P.C. v. Nationwide Property and Casualty Ins. Co., 36 Misc.3d 568, 576 (Dist. Ct. Nassau Co. 2012).

Applicant's objection letters, dated 4/24/2024, also assert that the requests "appears to be nothing more than a fishing expedition" and not with good cause. Applicant's counsel also stated, "All relevant verification requests have been previously provided yet you continue to improperly request the same information." As noted above, however, there is no evidence to support that items 1 through 5 were ever provided.

On 5/8/2024 and 5/10/2024, respectively, Respondent reiterated the identical requests for the same information [items 1 through 5].

On 6/12/2024, Applicant's counsel wrote back to Respondent and asserted its position that the requests were "outside the timeframe of 11 NYCRR 65-3.5 (Regulation 68) and reiterated its objections alleging the requests were "unduly burdensome and improper."

While Applicant's counsel also asserted that Respondent did not address the "objections" raised in the letters sent on 4/24/2024, these issues were preserved by both parties for

the trier of fact. In this case, none of the items requested were provided and Applicant objected to all items. Respondent timely reiterated its request for all 5 items. I found no regulation or case law that requires a carrier to relent in its requests simply because objections were timely raised. Rather, the issue becomes a question of fact for the trier of fact. *See*, Victory Medical Diagnostics, P.C., *supra.* While a detailed response would be required if some items were provided or the response was arguably response, in this case no items were provided and the response was a rejection and objection to all items sought. An insurer is not required to respond to an objection or provide objective reasons prior to arbitration or trial. *See*, Sayyed DC, P.C. v. Ameriprise Ins. Co., 71 Misc.3d 1208(A), 2021 N.Y. Slip Op. 50311(U) (Civ. Ct. Queens Co., Wendy Changyong Li., J., Apr. 13, 2021); *and see,* Victory Medical Diagnostics, P.C., *supra.*

Reasonableness of Requests v Objections

In support of its requests, Respondent submitted a copy of the EUO transcript of testimony provided by Yuriy Kandinov, owner of Refua Rx Inc, dated 3/23/2023, and the affidavit by Anne Mania, SIU Representative for Respondent, dated 8/27/2024.

Ms. Mania explained the facts and circumstances that gave rise to Respondent's EUO request and why the testimony by Mr. Kandinov prompted Respondent to seek the additional items, including items "1 through 5" at issue here. Ms. Mania noted that Mr. Kandinov testified inconsistently regarding Applicant's bank accounts and who had authority to sign checks. Ms. Mania noted many concerns regarding the nature and unusual concentration of Applicant's business, customers, types of medications prescribed, and other issues.

After considering the EUO testimony, the SIU affidavit, and correspondence between the parties, I find that Respondent established a good faith and reasonable basis for requesting the documents listed in the verification requests at issue here.

Similarly and for the same reasons, I find Applicant's objections unreasonable and that Respondent is entitled to the information requested.

11 N.Y.C.R.R. §65-3.5 (o), which provides:

> Claim procedure:
>
> (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.

Respondent's '120-Day Rule' denials were issued more than 120-days from the date of the first requests, respectively, and therefore timely and proper.

Conclusion

Having carefully considered the submissions of the parties, the relevant case law, and the arguments of respective counsel, I conclude that the preponderance of the credible evidence supports a finding in favor of the Respondent.

The denials are sustained.

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 NY
SS :
County of Onondaga

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

12/26/2024
(Dated)

Fred Lutzen

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:
2904a5d155c71a5b04519c3093b28c5f

Electronically Signed

Your name: Fred Lutzen
Signed on: 12/26/2024