

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Torq Supply Inc.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1341-6543
Applicant's File No.	170248
Insurer's Claim File No.	0277261720101060
NAIC No.	22055

ARBITRATION AWARD

I, Frank Marotta, 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: Assignor-JH-H

1. Hearing(s) held on 12/30/2024
Declared closed by the arbitrator on 12/30/2024

Aleksey Salipanov, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Jerry Marino, Arbitration Representative from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,332.65**, 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

The record reveals that the Assignor-JH-H, a 20-year-old-male, sustained injuries in a motor vehicle accident on 12/3/23.

The Applicant seeks reimbursement for durable medical supplies (DME) dispensed on 1/10/24.

The Respondent has not paid or denied the claim but asserts that the Applicant filed for arbitration prematurely.

The issue is whether the Applicant's claim should be dismissed without prejudice.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of \$1,332.65 for disputed fees in connection with DME dispensed on 1/10/24.

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing. In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations. The parties appeared and the hearing was conducted virtually via zoom.

There is no dispute that the bill in issue was submitted to and received by the Respondent for the purposes of Applicant's prima facie case, Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 114 A.D.3d 33, 977 N.Y.S.2d 292 (2d Dept. 2013), *aff'd* 25 NY 3d 498 (2015); Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). The Applicant submits a proof of mailing indicating that the bill in issue was mailed to the Respondent on 2/4/24 and the Respondent verification requests with an accompanying appendix of cases which including the claim in issue indicating receipt on 2/5/24. Spine America Medical, P.C. v. State Farm Mutual Automobile Insurance Company, 13 Misc.3d 135(A), N.Y. Slip Op. 52035(U) (App. Term 9th and 10th - October 5, 2006).

An insurer is required to pay, in whole or in part, a claim for no-fault benefits within 30 days. Insurance Law §5106(a); 11NYCRR 65- 3.8 (c). This 30-day period may be extended by making a request for additional verification of the claim within, "*15 business days of receipt of the prescribed verification forms*" 11 NYCRR §65-3.5(b). If the verification has not been supplied to the insurer 30 days after the original request the insurer shall, "*at a minimum... within 10 calendar days, follow with the party from whom the verification was requested, either by telephone call properly documented in the file or by mail.*" See 11 NYCRR §65-3.6(b). The 30-day period to pay or deny a claim does not begin to run until all outstanding verification requests is received, 11 NYCRR §65-3.8 (a); Central Suffolk Hospital v. NY Central Mut Fire Ins. Co., 24 A.D.3d 492, 807 N.Y.S.2d 382 (2d Dept 2005); New York & Presbyterian Hospital v Progressive Cas. Ins. Co., 2004 NY Slip Op 01750, 5 AD3d 568 (App Div 2d Dept. 2004). Hospital for Joint Diseases v. State Farm Mut. Auto. Ins. Co., 8 AD3d 533, 2004 NY Slip Op 05413 (App. Div. 2nd Dept., 2004); Daily Medical Equipment Distribution Center, Inc. v. Interboro Ins. Co., 56 Misc.3d 135(A), 2017 N.Y. Slip Op. 50958(U) (App. Term 2d, 11th & 13th Dists. July 21, 2017).

The Respondent provides verification request letters dated 2/26/24 and 3/12/24 to the Applicant advising the Applicant that their claim has been delayed for an examination under oath (EUO) of Torq Supply, Inc. for 3/5/24 and 4/11/24, respectively. The Respondent asserts that the Applicant filed for arbitration prematurely since EUO of the Applicant was scheduled to take place on 4/11/24 when the Applicant filed the request for arbitration on 3/26/24.

An insurer is entitled to receive all items necessary to verify a claim directly from the parties from whom such information was requested. 11 NYCRR §65-3.5(c) and is not obligated to pay or deny a claim until it has received verification of all relevant information requested. See Central Suffolk Hospital v. NY Central Mut Fire Ins. Co., supra, New York & Presbyterian Hospital v Progressive Cas. Ins. Co., supra. If an insurer establishes that when the arbitration commenced, they had not yet received the requested information the matter should be dismissed without prejudice since the 30-day period to pay or deny the claim had not started to run. Hospital for Joint Diseases v New York Central Mutual Fire Insurance Company, 2007 NY Slip Op 08038, 44 AD3d 903 (2d Dept. 2007); Favorite Health Products, Inc. v. New York Central Mutual Fire Ins. Co., 43 Misc.3d 126(A), 990 N.Y.S.2d 437, 2014 N.Y. Slip Op. 50467(U) (App. Term 2d, 11th & 13th Dists. 2014).

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find for the Applicant. The Respondent's proof does not include evidence to establish that the EUO notices were actually mailed. Where a no-fault insurer is relying on the defense an action is premature because additional verification is outstanding, it is the insurer's prima facie burden at trial to demonstrate that verification requests were timely mailed and that they did not receive the requested verification. Island Life Chiropractic, P.C. v Travelers Ins. Co., 2019 NY Slip Op 51273(U) (App. Term 2d, 11th and 13th Jud. Dist. 2019). See also Right Aid Medical Supply Corp. v. State Farm Mut. Auto. Ins. Co., 2019 Slip Op 51409(U) (App. Term 2d, 11th and 13th Jud. Dist. 2019); Right Aid Med. Supply Corp. v State Farm Mut. Auto. Ins. Co., 58 Misc3d 140(A), 2017 NY Slip Op 51857(U) (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017).

For the reasons noted I find for the Applicant in the amount of \$1,332.65.

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
	Torq Supply Inc.	01/10/24 - 01/10/24	\$1,332.65	Awarded: \$1,332.65
Total			\$1,332.65	Awarded: \$1,332.65

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/26/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall pay interest at a rate of 2% per month, calculated on a pro rata basis using 30-day month and in compliance with 11 NYCRR §65-3.9. Interest shall begin to accrue from the date of filing with the American Arbitration Association and end on the date the award is paid.

C. Attorney's Fees

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

The insurer shall also pay the applicant for attorney's fees as set forth below Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850." Id. The minimum attorney fee that shall be awarded is \$60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6 (i). For claims that fall under the Sixth Amendment to the regulation the

following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360." 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 Suffolk

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

01/01/2025
(Dated)

Frank Marotta

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:
2e4c9d3ee8ddce55615005b84f3f6c54

Electronically Signed

Your name: Frank Marotta
Signed on: 01/01/2025