American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stanley-Sangwook Kim D.O. PC (Applicant)	AAA Case No.	17-23-1326-6748
	Applicant's File No.	RFA23-322662
- and -	Insurer's Claim File No.	0388603780101063
	NAIC No.	35882
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Anne Malone, 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

1. Hearing(s) held on 12/16/2024
   Declared closed by the arbitrator on 12/16/2024

   Alexander Mun, Esq. from Horn Wright, LLP participated virtually for the Applicant

   Edwin Maldonado, Esq. from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$407.53**, 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 67 year old EIP reported involvement in a motor vehicle accident on December 21, 2022; claimed related injury and underwent an office visit and prolonged evaluation and management provided by the applicant on April 3, 2023.

   The applicant submitted a claim for these medical services, payment of which was delayed pending the EUO of the applicant and requests for documents and information submitted after the EUO of the applicant was completed and then timely denied after 120 days from the date of the original request.

   The issues to be determined at the hearing are:

Whether the respondent established that the claim is premature.

Whether the respondent's 120 day denial is proper.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

The timeline for this claim is as follows:

Date of subject accident` 12/21/2022

Date of services at issue 04/03/2023

Date of bill at issue 05/26/2023

Bill received by respondent 05/26/2023

Denial 06/07/2023

EUO of witness for applicant07/19/2023

Stanley-Sanwook Kim, D.O.

Correspondence from

Respondent re: documents/

information post-EUO07/26/2023

1st post-EUO request for

documents/information 08/09/2023

2nd post EUO request 09/19/2023

Tolling agreement between

Parties re: responses to

verification requests and

time to deny this claim 11/06/2023

Applicant filing forarbitration 11/27/2023

Applicant response to post-EUO requests 12/13/2023

NF-10 120 day denial 01/08/2024

If an insurer requires any additional information to evaluate the proof of claim, such request for verification must be made within 15 business days of the receipt of the bill in order to toll the 30 day period to pay or deny the claim. See 11 NYCRR 65-3.5(b); See also New York Hosp. Med. Ctr. of Queens v. Allstate Ins. Co., 2014 NY Slip Op 00640 (2d Dept. 2014.)

Where there is a timely original request for verification, but no response to the original request for verification is received within 30 days, or the response to the verification request is incomplete, then the insurer, within 10 calendar days after the expiration of that 30 day period, must follow up with a second request for verification. Id.

If there is no response to the second or follow up request for verification, the time in which the insurer must decide whether to pay or deny the claim is indefinitely tolled. Id.

Therefore, when a no-fault medical service provider fails to respond to the requests for verification the claim is premature and should be denied without prejudice.

However, pursuant to 11 NYCRR §65-3.5(o) an insurer may issue a denial if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all such verification under applicant's control or possession or written proof providing reasonable justification for the failure to comply.

11 NYCRR 65-3.5(o) specifically excludes EUOs from its purview. The document requests at issue were in response to the testimony by the witness on behalf of the applicant at the EUO and therefore, fall outside of the 120-day rule.

In any event, the Court in Neptune Med. Care, P.C. v. Ameriprise Auto & Home Ins., 48 Misc. 3d 139A (2015), Appellate Term, 2d Department, found that "even if defendant had tolled the 30-day period within which it was required to pay or deny the bills at issue, by timely requesting verification pursuant to 11 NYCRR 65-3.8(a)…the Regulations do not provide that such a toll grants an insurer additional opportunities to make requests for verification that would otherwise be untimely." Thus, Respondent's request for post-EUO verification and its denial based upon the 120-day rule.

The parties have a duty to communicate with each other. The purpose of the No-Fault statute is to ensure prompt resolution of claims submitted by parties injured in motor vehicle accidents. The parties' obligations are centered on good faith and common sense. Any questions concerning a communication should be addressed by further communication, not inaction. Dilon Medical Supply Corp. v. Travelers Ins. Co., 7 Misc.3d 927, 796 N.Y.S.2d 872 (Civ. Ct. Kings Co. 2005.)

The response to a post-EUO request for documents/information that is "arguably responsive" places the burden to take further action upon the respondent. All Health Medical Care, P.C. v. GEICO, 2 Misc.3d 907 (N.Y. City Civ. Ct. 2004.) Moreover, as long as applicant's documentation is "arguably responsive" to an insurer's post-EUO request, the insurer must act affirmatively once it receives this response. Media Neurology, P.C. v. Countrywide Ins. Co., 21 Misc.3d 1101 (N.Y. City Civ. Ct. 2005.)

In this matter, the post-EUO requests were for documents and information related to an SIU affidavit and/or the testimony of a witness on behalf of the applicant. The requests for this discovery are not related to the 120 day denial pursuant to 11 NYCRR §65-3.5(o) but do require a response from the applicant.

In the instant case, respondent issued timely requests for a witness on behalf of the applicant to appear at an EUO. The applicant complied and a witness on its behalf attended. Following the EUO of applicant, respondent issued timely requests for post-EUO information/documents.

However, since the post EUO requests were necessary for the respondent to verify this claim, they are governed by 11 NYCRR 65-3.5(b); See also New York Hosp. Med. Ctr. of Queens v. Allstate Ins. Co., 2014 NY Slip Op 00640 (2d Dept. 2014.)

In Island Life Chiropractic, PC v Travelers Ins.Co, 64 Misc. 3d 143(A), 117 N.Y.S.3d 428 (App Term 2d Dept. 2019) the court held that "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 that the defendant did not receive the requested verification. (see 11 NYCRR 65-3.8[a]; Right Aid Medical Supply Corp. v State Farm Mut. Auto Ins. Co., 58 Misc 3d 140(A), 94 N.Y.S.3d 540 NY Slip OP 51875[U] (App Term 2d Dept, 2d, 11th & 13th Jud Dists (2017.)

In the instant matter, the respondent submitted proof of mailing of the verification requests and did not submit evidence from someone with personal knowledge that a response was not received from the applicant.

11 N.Y.C.R.R. § 65-3.5 states in pertinent part:

(b) Subsequent to the receipt of one or more of the completed

verification forms, any additional verification required by the insurer to establish proof of claim shall be requested within 15 business days of receipt of the prescribed verification forms. The insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested.

d) All examinations under oath and medical examinations requested by the insurer shall be held at a place and time reasonably convenient to the applicant.

Furthermore, 11 N.Y.C.R.R. § 65-3.8(a)(1) states:

No-Fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested pursuant to section 65-3.5 of this subpart.

The courts in New York have consistently held that insurers are entitled to receive all verification necessary to determine the eligibility of a provider to receive No-Fault benefits. The issues for which additional verification is properly sought are not limited and can include, for example whether the services were provided by persons not employed by the provider or whether the professional corporation is ineligible for benefits pursuant to 11 N.Y.C.R.R. § 65-3.16(a)(12) because it was fraudulently incorporated and owned and controlled by persons other than a licensed physician.See State Farm Mut. Auto. Ins. Co. v. Mallela**,** 4 N.Y.3d 313, 319, 794 N.Y.S.2d 700 (2005); Andrew Carothers, M.D., P.C. v Progressive Ins. Co., 33 NY3d 389, 104 N.Y.S.3d 26, 128 N.E.3d 153 (2019.)

Significantly, in the instant matter, the applicant filed for arbitration prior to responding at all to the post-EUO verification requests. In addition, to date it has not responded to the respondent's letter in response to what it considered to be a partial response to the verification requests nor has it provided complete responses.

The respondent has supported the need for the information/documents requested with a comprehensive analysis of the issues relevant issues and proofs related to

this matter, including a comprehensive SIU affidavit by Anna Jackson outlining the specific EUO testimony which created the issues for which further clarification was necessary post-EUO.

In addition, the submission included an affidavit by Anjelica Walsh, a Claims Supervisor employed by the respondent who discussed in detail its business practices and the documentation related to this particular claim, the mailing of the verification requests and attesting to the incomplete responses received.

The applicant did not submit sufficient evidence to refute the arguments made by the respondent which were supported by its submissions.

This claim involves several issue which have not yet been resolved.

Based on the totality of the submissions, I find that the claim is premature.

Accordingly, the claim is dismissed without prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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

01/12/2025
(Dated)

Anne Malone

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:
a4cfb5ab21d459e11d660ae82e971869

Electronically Signed

Your name: Anne Malone
Signed on: 01/12/2025