

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Refua Rx Inc. (Applicant)	AAA Case No.	17-24-1351-8845
- and -	Applicant's File No.	GM23-720794 GM23-720840
State Farm Fire & Casualty Company (Respondent)	Insurer's Claim File No.	52-48R4-81M
	NAIC No.	25143

### ARBITRATION AWARD

I, Matthew J. Cavalier, 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

1. Hearing(s) held on 12/13/2024  
Declared closed by the arbitrator on 12/13/2024

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

Christine DiGregorio, Esq from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$761.84**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated at the hearing that the date of interest accrues if the Applicant prevails is June 13, 2024.

3. Summary of Issues in Dispute

Whether the Assignor, a 43-year-old male ("IM") on the date of the accident ("DOA") who is the Eligible Injured Party ("EIP") injured in motor vehicle accident ("MVA") on

April 23, 2023, and received pharmaceutical medical services on date of service ("DOS") August 16, 2023, were correctly billed in the sum of \$761.84, and timely submitted by the Applicant,

Whether the Respondent can maintain its defense of the Applicant's failure to respond in full to requests for Pre & Post-EUO additional verification within 120 days of the initial letter dated October 18, 2023?

#### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. 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. The Arbitrator may question any witness or party and 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) (Regulation 68-D)

The Applicant is seeking to be reimbursed the sum of \$761.84 for DOS August 16, 2023, for the disputed Pharmaceutical medical services. The Applicant timely billed the Respondent, and the Respondent sent the initial written request for additional verification with a letter dated October 18, 2023, and subsequent timely request made on November 21, 2023, and did issue a 120-day denial dated February 21, 2024, based upon the Applicant Medical Provider's ("AMP") failure to respond completely to the initial request for additional verification dated October 18, 2023.

#### **Fee Schedule**

The Parties requested at the Hearing that I take judicial Notice of the NYSWC Fee Schedule and its Associated Rules. Upon my review of the submitted records and the arguments of the Parties at the Hearing, I hereby rule that the Applicant correctly billed upon their initial submission of the NF-3s and if the Applicant prevails, they will be awarded \$761.84.

#### **Prima facie Case**

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a *prima facie* case with the respect to the services that are the subject of this arbitration. See, **Mary Immaculate Hospital v. Allstate Insurance Co.**, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004); **Amaze Medical Supply Inc. v. Eagle Ins. Co.**, 2 Misc 3d 128[A], 2003 NY Slip Op 51701 (U) (App Term, 2d and 11th Jud Dists 2003).

Once Applicant has made out a *prima facie* case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. **Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co.**, 9 NY3d 312 (2007).

### **Response to the Request for Additional Verification**

The Applicant contends that all the requested information as to the pharmaceuticals that is in their dominion and control including, the NF-3s, the AOB, and the prescriptions, the **Mallela** information sought, was previously forwarded to the Respondent when initially billed for DOS August 16, 2023, the EUO on March 23, 2023, and the December 5, 2023 Response to the Respondent's RAVS dated October 18 and November 21, 2023.

The Applicant's Attorney argued that the AMPs sworn EUO testimony of March 23, 2023, and sworn SIU investigation report of Anne Maria, an SIU Employee of the Respondent, dated August 21, 2024, that is the basis for the RAVs is vague and conclusory, and rebutted by the AMP's Response dated December 5, 2023. thus, this defense must fail.

The Respondent's counsel opined that the insurer may issue a denial if more than 120 calendar days after the initial request for verification if Applicant does not submit all such verification under their control or possession or written proof providing reasonable justification for the failure to provide same and has done so for several dates of service and the balance are not ripe for arbitration. A no-fault claim must be paid or denied within thirty (30) days after proof of claim is received or it is "overdue". See, N.Y. Ins. Law § 5106[a]; 11 NYCRR 65-3.8(a)(1); **Presbyterian Hospital v. Maryland Cas. Co.**, 90 N.Y.2d 274 (1997). An insurer may toll the 30-day claim period for the purpose of obtaining verification. "[W]ithin 15 business days of receipt of the prescribed verification forms", an insurer may seek additional verification of claim. See, 11 NYCRR 65-3.5(b). "[I]f any requested verification has not been supplied to the insurer 30 calendar days after the original request, the insurer shall, within 10 calendar days, follow up with the party from whom the verification was requested". See, 11 NYCRR 65-3.6(b).

Notwithstanding the above, 11 NYCRR 65-3.5 (c) states "The insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." See also, **Nyack Hospital v. State Farm Mutual Automobile Ins. Co.**, 19 A.D.3d 569, (2d Dept. 2005), where an insurer is not obligated to pay or deny a claim until it has received verification of all relevant information requested.

Respondent acknowledges timely receipt of the bill for \$761.84. Respondent did submit POM evidence that it properly and correctly mailed the initial verification letters beginning on October 18, 2023, for the claim, and the subsequent timely RAV on November 21, 2023, to the Custodian of the medical and business records sought from the AMP, the Applicant Medical Provider, and their chosen No-fault Collection Attorney.

After a review of the credible evidence submitted and the arguments raised by respective counsel and the evidence the Parties have in that matter, that neither the Applicant Medical Provider, nor the AMP's No-fault Collection Attorney, the custodian of the records sought and their agent, have not substantially complied with these requests for additional verification and the Respondent prevails, the 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 NY  
SS :  
County of Suffolk

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

01/13/2025  
(Dated)

Matthew J. Cavalier

**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:**  
cd70392ee7e9e40e1b6cd5ca745dc239

**Electronically Signed**

Your name: Matthew J. Cavalier  
Signed on: 01/13/2025