

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. 17-24-1352-8741

Applicant's File No. GM24-748004,
GM24-793662

Insurer's Claim File No. 3258Q262Z

NAIC No. 25178

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 12/23/2024
Declared closed by the arbitrator on 12/23/2024

John Fagan, 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, **\$927.62**, 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 26 year old EIP reported involvement in a motor vehicle accident on October 6, 2023; claimed related injury and received Naproxen and Cyclobenzaprine on November 1, 2024 and Ondansetron oral medication provided by the applicant on February 14, 2024.

The applicant submitted a claim for this oral prescription medication. Payment of the bills for date of service November 1, 2023 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.

Payment of the bill for date of service February 14, 2023 was delayed pending responses to requests for documents and information submitted after the EUO was completed.

The post-EUO requests were for further documents and information related to this claim and/or the corporate structure and business practices of the applicant.

The issues to be determined at the hearing are:

Whether the respondent's 120 day denial for prescription medication provided on November 1, 2023 is proper.

Whether the claim for prescription medication provided on February 14, 2024 is premature.

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.

This claim involves three bills for prescription medication:

Two bills for medication provided on November 1, 2023 which totaled \$484.80 (\$308.40 and \$176.40)

One bill for medication provided on February 14, 2024 for \$442.82

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.)

Post-EUO requests for documents/information for prescription medication provided on November 1, 2024

In the instant case, respondent issued 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.

There have been numerous hearings related to the same post-EUO documents/information requested by this respondent from this applicant involving other EIPs. Many of these other determinations have relied upon the findings by Arbitrator Andreotta (AAA case no. 17-23-1310-5036) in which she found that the applicant "substantially complies with these extensive and unreasonable requests."

After a review of the submissions in the instant matter, I find that, although the prior awards are not *res judicata* to the claim at issue there is no new or different evidence in the record in the case at issue which would lead to a contrary finding and conclusion.

Based on the foregoing, I find that the respondent has not established its 120 day defense and that its denial is not proper.

Therefore, the applicant is awarded \$484.80 for prescription medication provided on November 1, 2023.

Outstanding post-EUO requests for the bill for prescription medication provided on February 14, 2024

The submissions do not include a denial or copies of requests for post-EUO documents/information related to the prescription medication provided by the applicant on February 14, 2024.

In order to establish its defense that this bill is premature, based on the applicable case law the respondent was required to provide proof of mailing of the verification requests and an affidavit or other sufficient evidence to confirm that no response was received.

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 did not submit 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 for the bill for prescription medication provided by the applicant on February 14, 2024.

Under these circumstances, the respondent failed to establish that the claim for February 14, 2024 is premature and therefore, the time to pay or deny this bill is not tolled.

Therefore, the applicant is awarded \$442.82 for prescription medication provided on February 14, 2023.

Accordingly, the applicant is awarded a total of \$927.62 in disposition of this claim.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Refua Rx Inc.	11/01/23 - 11/01/23	\$308.40	Awarded: \$308.40
	Refua Rx Inc.	11/01/23 - 11/01/23	\$176.40	Awarded: \$176.40
	Refua Rx Inc.	02/14/24 - 02/14/24	\$442.82	Awarded: \$442.82
Total			\$927.62	Awarded: \$927.62

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/20/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

- C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 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 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.

01/14/2025

(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:
a4123de08192465960c8dc85ea2eb43c

Electronically Signed

Your name: Anne Malone
Signed on: 01/14/2025