

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hackensack Specialty ASC LLC f/k/a
Dynamic Surgery Center, LLC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No.	17-24-1337-0265
Applicant's File No.	RFA23-326787
Insurer's Claim File No.	0552404303 2SJ
NAIC No.	19232

ARBITRATION AWARD

I, Eileen Casey, 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 02/20/2025
Declared closed by the arbitrator on 02/20/2025

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

Allison Lindsey, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$7,680.14**, was AMENDED and permitted by the arbitrator at the oral hearing.

The original amount claimed was \$7,680.14 for the facility fees associated with a cervical epidural steroid injection performed on October 11, 2020, a cervical medial branch block injection and trigger point injections performed on November 22, 2020, and cervical medial branch block injections performed on February 21, 2021. Applicant's counsel amended the amount claimed to \$3,613.44 pursuant to the fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The EIP (CM), a then 55-year-old female, was a passenger in a motor vehicle involved in an accident on July 8, 2019. The amount claimed, as amended, is \$3,613.44 for the facility fees associated with a cervical epidural steroid injection performed on October 11, 2020, a cervical medial branch block injection and trigger point injections performed on November 22, 2020, and cervical medial branch block injections performed on February 21, 2021. Respondent neither paid nor denied the claim in dispute but instead requested additional verification. The issue is whether Respondent established that the request for arbitration is premature as there are outstanding requests for verification.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the oral arguments and a review of the documents contained in the ADR Center maintained by the American Arbitration Association. The original amount claimed was \$7,680.14 for the facility fees associated with a cervical epidural steroid injection performed on October 11, 2020, a cervical medial branch block injection and trigger point injections performed on November 22, 2020, and cervical medial branch block injections performed on February 21, 2021. Applicant's counsel amended the amount claimed to \$3,613.44 pursuant to the fee schedule.

Applicant's Prima Facie Case

The evidence showed that the EIP (CM), a then 55-year-old female, was a passenger in a motor vehicle involved in an accident on July 8, 2019.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits was overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima case of entitlement to reimbursement.

Requests for Additional Verification

Respondent neither paid nor denied the bills in dispute but instead requested additional verification.

It is accepted that once presented, a claim for health care benefits must be paid or denied within (30) thirty days of an insurer's receipt thereof. This period may be tolled by requesting additional verification, as provided by 11 NYCRR Section 65-3.8 (a) (1). The insurer must make the verification request within fifteen (15) business days from its receipt of the claim, pursuant to 11 NYCRR Section 65-3.5. If a response to the initial request for additional verification is not received by the carrier within thirty (30) days, then, within ten (10) calendar days after the thirty-day period, the carrier must make a

second request. See, 11 NYCRR Section 65 3.6. An insurer is not obligated to pay or deny a claim until it has received all relevant information.

The evidence demonstrates that Respondent sent timely initial and follow-up requests for additional verification as to the claims in dispute. The letters noted the Examinations under Oath (EUOs) of Applicant and the EIP were requested and asked for detailed information concerning the services provided and Applicant/Applicant's owners.

As to services provided on October 11, 2020, Respondent provided a December 16, 2020 initial request for additional verification and a January 20, 2021 follow-up request for additional verification. Applicant submitted February 9, 2021 and June 28, 2021 responses to the verification requests.

As to services provided on November 22, 2020, Respondent provided a January 8, 2021 initial request for additional verification and a February 24, 2021 follow-up request for additional verification. Applicant submitted February 8, 2021 and June 22, 2021 responses to the verification requests. Respondent's February 24, 2021 follow-up request did not address Applicant's February 8, 2021 response but simply reiterated the original verification requests.

As to services provided on February 21, 2021, Respondent provided an April 6, 2021 initial request for additional verification and a May 13, 2021 follow-up request for additional verification. Applicant submitted a June 22, 2021 response to the verification requests.

Respondent submitted letters, dated August 11, 2021, from Respondent's counsel, Short and Billy, replying to Applicant's June 22, 2021 responses to the verification requests related to dates of services October 11, 2020 and November 22, 2020. Short and Billy advised that Applicant's responses were received on July 20, 2021 but Applicant did not supply all the answers to the verification requests. Short and Billy further advised that since the responses were incomplete, the bills would continue to be delayed.

Respondent also submitted a letter, dated August 11, 2021, from Respondent's counsel, Short and Billy, concerning services provided on February 21, 2021 but the letter notes the incorrect amount of the bill. The letter also states that Applicant's response is attached but the response attached concerned date of service November 22, 2020.

Applicant's counsel argued that Respondent failed to timely respond to Applicant's February 9, 2021 and February 8, 2021 responses concerning the claims for dates of service October 11, 2020 and November 22, 2020 respectively and therefore those claims became overdue in March of 2021. Applicant's counsel also argued that there was no reply from Respondent to Applicant's June 22, 2021 response concerning the claim for date of service February 21, 2021.

Respondent's counsel argued that Applicant's responses were incomplete and did not constitute substantial compliance and therefore the arbitration was premature. Respondent's counsel noted that Short & Billy detailed the outstanding verification in their August 11, 2021 replies.

There is no provision in the No-Fault regulations which permit a claimant or an insurance company to ignore communications from each other without risking its chance to prevail in the matter. *Back to Back Chiropractor, P.C. v. State Farm Mutual Automobile Ins. Co.*, 35 Misc.3d 1241(A), ___ N.Y.S.2d ___, 2012 N.Y. Slip Op. 51088(U) at 5, 2012 WL 2161476 (Dist. Ct. Suffolk Co., C. Stephen Hackeling, J., June 15, 2012).

An insurer has a duty to act, by payment or denial of the claim or request for further verification, upon receipt of the applicant's response to the insurer's verification request, so long as the applicant's documentation is arguably responsive to the insurer's verification request. *Pro-Align Chiropractic, P.C. v. Travelers Property Casualty Ins. Co.*, 58 Misc.3d 857, 860 (Dist. Ct. Suffolk Co. 2017).

Findings

Based upon the foregoing, I find that the evidence established that Applicant responded to Respondent's requests for verification concerning the three claims at issue and Applicant's documentation was arguably responsive to Respondent's requests. Respondent failed to demonstrate that it affirmatively acted in a timely manner to Applicant's responses. Therefore, I find that those claims are overdue. Accordingly, Applicant's claim, as amended, is granted in its entirety.

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	Amount Amended	Status
	Hackensack Specialty ASC LLC f/k/a Dynamic Surgery Center, LLC	10/11/20 - 10/11/20	\$1,548.91	\$976.38	Awarded: \$976.38
	Hackensack Specialty ASC LLC f/k/a Dynamic Surgery Center, LLC	11/22/20 - 11/22/20	\$2,022.30	\$1,213.07	Awarded: \$1,213.07
	Hackensack Specialty ASC LLC f/k/a Dynamic Surgery Center, LLC	02/21/21 - 02/21/21	\$4,108.93	\$1,423.99	Awarded: \$1,423.99
Total			\$7,680.14		Awarded: \$3,613.44

B. The insurer shall also compute and pay the applicant interest set forth below. 07/27/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest accrues when a payment is "overdue", 11 NYCRR § 65-3.9 (a), and an insurer that fails to timely pay said benefits "is required to pay interest at the rate of 2% per month on the claim for the period commencing 30 days after the claim was

presented...for payment until the date the claim was or is paid." *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 30 A.D.3d 492, 494 (2006). See Insurance Law §5106 (a).

As to the claim in the amount of \$976.38 for DOS October 11, 2020, Respondent is therefore required to pay interest commencing March 16, 2021, 35 days after Applicant's February 9, 2021 response to the verification requests.

As to the claim in the amount of \$1,213.07 for DOS November 22, 2020, Respondent is therefore required to pay interest commencing July 27, 2021, 35 days after Applicant's June 22, 2021 response to the verification requests

As to the claim in the amount of \$1,213.07 for DOS February 21, 2021, Respondent is therefore required to pay interest commencing July 27, 2021, 35 days after Applicant's June 22, 2021 response to the verification requests

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee, in accordance with 11 NYCRR § 65-4.6(d). Therefore, the insurer shall pay the applicant an attorney's fee of 20% of benefits plus interest, with no minimum fee and a maximum fee of \$1,360. 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(b).

- 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 Queens

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

03/23/2025

(Dated)

Eileen Casey

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:
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Electronically Signed

Your name: Eileen Casey
Signed on: 03/23/2025