

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Pain Specialists PC  
(Applicant)

- and -

Farmers Insurance Company  
(Respondent)

AAA Case No. 17-24-1357-0077

Applicant's File No. N/A

Insurer's Claim File No. 7001732687-1-4

NAIC No. 21652

**ARBITRATION AWARD**

I, Meryem Toksoy, 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 (MR)

1. Hearing(s) held on 03/25/2025  
Declared closed by the arbitrator on 03/25/2025

Usman Nawaz, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)  
participated virtually for the Applicant

Argyria Kehagias, Esq. from Law Offices of Rothenberg & Romanek participated  
virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$148.69**, 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

Applicant is the assignee of a 20-year-old male who was injured as a passenger in a motor vehicle accident on 08-20-20.

It contends that **\$148.69** is owed for an **office visit** which took place on 08-27-20.

Respondent, looking to obtain an award in its favor, argues that the claim should be denied. It asserts that **the assignor breached the terms of the policy by failing to appear for an Examination Under Oath (EUO)** on 12-08-20 and 01-08-21.

I must determine whether the submitted documents support this defense.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives.

There were no witnesses.

**LEGAL FRAMEWORK:**

AN INSURER'S RIGHT TO REQUEST AN EUO, AND THE SHOWING REQUIRED TO ESTABLISH A BREACH OF THIS POLICY CONDITION:

The Mandatory Personal Injury Endorsement, outlined in 11 NYCRR §65-1.1 confers upon the insurer the right to request the eligible injured person or that person's assignee or representative to submit to examinations under oath as may reasonably be required.

An insurer may deny claims based on the failure to appear for an EUO as it constitutes a breach of a condition precedent to coverage. See Mega Billing, Inc. v. State Farm Fire & Casualty Company, 35 Misc.3d 145(A), 2012 N.Y. Slip Op. 51014(U) (App Term, 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Jud. Dists. 2012).

An insurer is *not* required to set forth any objective standards in the scheduling notices to specify the reason(s) why an EUO is being requested. Flow Chiropractic, P.C. v. Travelers Home & Mar. Ins. Co., 44 Misc.3d 132(A), 2014 NY Slip Op 51142(U)(App Term, 2<sup>nd</sup> Dept, 9<sup>th</sup> & 10<sup>th</sup> Jud. Dists, 2014); and where the record shows that no response was given to the EUO requests, any objections regarding those EUO requests will be deemed waived. Viviane Etienne Med. Care, P.C. v. State Farm Mut. Auto. Ins. Co., 35 Misc.3d 127(A), 2012, NY Slip Op 50579(U)(App. Term 2nd, 11th and 13<sup>th</sup> Jud. Dists. 2012).

To sustain the defense of a breach of a condition precedent, to wit, the failure to appear for an EUO, the insurer must demonstrate as a matter of law that it twice duly demanded an examination under oath, that the party twice failed to appear and that the insurer issued a timely denial. Interboro Ins. Co. v. Clennon, 113 A.D.3d 596, 979 N.Y.S.2d 83 (App. Div., 2<sup>nd</sup> Dept, 2014).

It should be noted, however, that if an EUO is rescheduled by mutual agreement, it does not constitute a failure to appear. DVS Chiropractic, P.C. v. Interboro Ins. Co., 36 Misc.3d 138(A), 2012 N.Y. Slip Op. 51443(U)(App Term, 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Jud. Dists., 2012).

## SCHEDULING OF THE EUOS, TOLLING OF THE CLAIM(S):

An insurer has the right to make such a request before or after the claim (bill) is received. Stephen Fogel Psychological, P.C. v. Progressive Casualty Ins. Co., 35 A.D.3d 720, 827 N.Y.S.2d 217 (App. Div, 2<sup>nd</sup> Dept, 2006), rev'g, 7 Misc.3d 18, 793 N.Y.S.2d 661 (App Term, 2<sup>nd</sup> and 11<sup>th</sup> Dists., 2004).

Where the insurer requests an EUO after its receipt of the bill, the insurer must demonstrate that the initial and follow-up requests for verification were timely issued pursuant to 11 NYCRR §§65-3.5(b) and 65-3.6(b). Essential Acupuncture Services, P.C. v. Ameriprise Auto & Home Ins. Co., 2012 N.Y. Slip Op. 52404(U) (App. Term 2nd, 11th and 13<sup>th</sup> Jud. Dists. 2012).

Specifically, as required by 11 NYCRR §65-3.5(b), the initial request for verification is to be made within 15 business days of receipt of the claim.

A request that is sent beyond the 15 business days is still valid so long as it is issued within 30 days from receipt of the claim; such a deviation will simply reduce the insurer's time to pay or deny by the same number of days. 11 NYCRR §65-3.8(I). See Nyack Hosp. v. General Motors Acceptance Corp., 8 NY3d 294, 2007 NY Slip Op 02439 (Court of Appeals, 2007).

On the other hand, if the initial request for verification is made beyond 30 days from receipt of the claim, the request will be deemed a nullity and the time to pay or deny will have expired. Compas Med., P.C. v. Farm Family Cas. Ins. Co., 2015 NY Slip Op 51631(U) (App. Term 2nd, 11th and 13<sup>th</sup> Jud. Dists., Nov. 9, 2015).

Per 11 NYCRR §65-3.6(b), after 30 calendar days from the original request, the insurer has a regulatory duty to issue a second verification request within the following 10 calendar days. In the absence of any such second request for verification, the insurer's time to pay, deny or request verification will not be tolled. Westchester Med. Ctr. v. Allstate Ins. Co., 112 AD3d 916, 2013 NY Slip Op 08616 (App. Div., 2<sup>nd</sup> Dept, 2013).

## DEMONSTRATING THE NON-APPEARANCES:

To establish the failure of the party to appear for duly scheduled EUOs, it is incumbent upon the insurer to submit proof by someone with personal knowledge of the non-appearance. Alrof, Inc. v. Safeco Natl. Ins. Co., 39 Misc.3d 130(A), 2013 N.Y. Slip Op. 50458(U)(App Term, 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Jud. Dists., 2013).

Certified transcripts which document the party's failure to appear for the EUOs have also been deemed sufficient. Active Chiropractic, P.C. v. Praetorian, 43

Misc.3d 134(A), 2014 NY Slip Op 50634(U)(App Term, 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Jud. Dists., April 7, 2014).

#### THE DENIAL:

Where an insurer denies liability based upon an alleged breach of a policy condition, to wit, the failure to appear for an Examination Under Oath, such defense must be preserved in a timely denial. Westchester Medical Center v. Lincoln General Insurance Company, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (App. Div., 2<sup>nd</sup> Dept. 2009). Otherwise, it is subject to the preclusion remedy. Id. Citing to Central General Hospital v. Chubb Group of Ins. Cos., 90 N.Y.2d 195, 659 N.Y.S.2d 246 (Court of Appeals, 1997). See also Nationwide Affinity Ins. Co. of America v. Jamaica Wellness Medical, P.C., 167 A.D.3d 192 (App. Div., 4th Dept., Nov. 16, 2018).

#### DECISION:

**The evidence offered by the Respondent qualifies in all respects.** The record shows that Respondent duly requested the assignor's appearance at an EUO, that the assignor twice failed to appear, and that as a result of failing to comply with a condition precedent to coverage, Respondent issued a timely and proper disclaimer predicated on the breach. Accordingly, after careful consideration of the submitted documents, I find that Respondent has met its burden.

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 Nassau

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

04/24/2025

(Dated)

Meryem Toksoy

### **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:**  
0fe2c2f5b71108ea280f84da1a9d0bd6

### Electronically Signed

Your name: Meryem Toksoy  
Signed on: 04/24/2025