

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tri-Borough NY Medical Practice PC
(Applicant)

- and -

Truck Insurance Exchange
(Respondent)

AAA Case No. 17-24-1373-8784

Applicant's File No. N/A

Insurer's Claim File No. 7007328193-1-3

NAIC No. 21709

ARBITRATION AWARD

I, Kathleen Sweeney, 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: IP

1. Hearing(s) held on 05/27/2025
Declared closed by the arbitrator on 05/27/2025

Rajesh Barua from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Jennifer Joseph from Law Offices of Rothenberg & Romanek participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$7,893.28**, 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

Whether the Respondent's denial based on the 120 day rule was proper?

This arbitration arises out of medical treatment for the IP, a 61 year old male, related to injuries sustained in a motor vehicle accident that occurred on 3/16/24. Applicant seeks reimbursement for fees related to a surgery that took place on 8/8/24. Respondent denied the claim based on the 120 day rule regarding outstanding pre and post EUO verification requests. This case is related to several other cases which considered the same pre EUO and post EUO verification requests.

4. Findings, Conclusions, and Basis Therefor

Applicant has established its prima facie case with proof that it submitted a proper claim setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

Respondent received the bills in question and has submitted copies of verification requests. Verification was timely sought on each with follow up for no response also timely. Respondent sought verification of numerous items before an EUO that had been held in 2023 and requests the same items here. Copies of all verification requests were sent to the IP, Applicant and the attorney directly. There are many requests and responses in related cases but numerous items remain outstanding.

A No-Fault claim must be paid or denied within thirty days or it is "overdue." The insurer may lengthen the time limitations by requesting additional verification. Pursuant to 11 NYCRR 65-3.5(b), the insurer has 15 (fifteen) business days after receiving proof of claim to request additional verification. Further, Section 65-3.6 (b) states: "At a minimum, if 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, either by telephone call properly documented in the file, or by mail. At the same time, the insurer shall inform the Applicant and such person's attorney of the reason(s) why the claim is delayed by identifying in writing the missing verification and the party from whom it was requested."

Where the insurer establishes that it timely mailed its verification requests to the claimant, and the claimant fails to prove that it provided the requested verification prior to the commencement of the action, the action is premature; it should be dismissed without prejudice to the commencement of a new action inasmuch as the 30-day period within which the insurer was required to pay or deny the claim did not commence to run. *Triangle R, Inc. v. GEICO Ins. Co.*, 2010 N.Y. Slip Op. 50885(U), 2010 WL 2010158 (App. Term 2d, 11th & 13th Dists. May 13, 2010).

Here, Applicant has basically refused to provide certain items and several items continue to be outstanding. As such the Respondent denied the bill pursuant to the 120 day rule on 12/2 and 12/17. Based on the foregoing the denial is upheld.

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

06/26/2025

(Dated)

Kathleen Sweeney

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:
7536523ef995a9fed304a9bdcf16e864

Electronically Signed

Your name: Kathleen Sweeney
Signed on: 06/26/2025