American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

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| Next Generation Diagnostic Imaging PC (Applicant) | AAA Case No. | 17-24-1358-3882 |
| | Applicant's File No. | 189476 |
| - and - | Insurer's Claim File No. | 239493018 |
| | NAIC No. | 32786 |
| Progressive Casualty Insurance Company (Respondent) | | |

**ARBITRATION AWARD**

I, John Langell, 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 07/23/2025
   Declared closed by the arbitrator on 07/23/2025

   Aleksey Selipanov, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

   Mike Buttigieg, Esq. from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,860.16**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount in controversy has been amended to 1,637.88 in accordance with the applicable fee schedule.

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

3. Summary of Issues in Dispute

   The Assignor is a then 30 year old female who was injured in an automobile accident on 10/17/23. Assignor underwent MRI's on 12/22/23. Reimbursement for that treatment was timely denied by the Respondent on the grounds that the Assignor failed to appear

for two scheduled IME's. No fee schedule issues have been raised in light of the Applicant's amendment. The primary issue for resolution at this hearing is whether the Respondent's no show denials may be sustained.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ECF, and the oral arguments presented by the parties' representatives. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ECF maintained by the American Arbitration Association.

Based on the materials submitted for my review, I find that Applicant's bill was submitted to and received by Respondent, and that Applicant has therefore demonstrated a prima facie case of entitlement to the disputed no fault benefits. See, Viviane Etienne Med. Care, P.C. v. Country Wide Ins. Co., 2013 NY Slip Op. 08430 (2nd Dept. 2013).

With respect to the asserted "no-show" defense, it is clear that the burden falls on Respondent to demonstrate prima facie that: 1) The notification letters were actually mailed; and 2) the Applicant failed to appear as scheduled. See generally, Stephen Fogel Psychological, P.C. v. Progressive Cas, Ins. Co., 35 A.D.2d 720 (2nd Dept. 2006). Respondent must prove that it sent both an original and follow up request and that the Applicant failed to appear for both scheduled proceedings. Prime Psychological Services, P.C. v. ELRAC, Inc., 25 Misc.3d 1244(A), 2009 N.Y. Slip Op. 52579(U) at 3, (Civ. Ct. Richmond Co., Katherine A. Levine, J., Dec. 4, 2009).

In support of its alleged no show defense, the Respondent has submitted copies of the relevant scheduling letters, together with affirmations of mailing and non-appearance. No issue has been raised concerning the Respondent's proof of mailing or the Assignor's non-appearances at the IME's in question. No issue has been raised concerning the timeliness of the Respondent's scheduling letters in relation to the bills presently at issue. I note, in any event, that both of the IME's presently at issue were scheduled to be held prior to the receipt of those bills. There is no claim that the Assignor appeared, attempted to appear, or objected to appearing at the IME's at issue herein. There is no claim that the substance of the Respondent's scheduling letters was insufficient in any respect. The only issue raised by the Applicant herein concerns the sufficiency of the Respondent's no show denials, which omit specific reference to the particular IME dates in question. Instead, the Respondent's denials allege that "Failure to submit to multiple requests for Medical Examinations is a violation of both this policy's contractual Duties and Conditions."

I note that the issue raised by the present Applicant has received mixed treatment in this forum. Certain Arbitrators have followed the lead of former Arbitrator Maslow, who, in Case No.17-18-1115-4877 and elsewhere, determined in light of the Court's decision in Unitrin Advantage Ins. Co. v. All of NY, Inc., 158 A.D.3d 449 (1st Dept. 2018) that the omission of specific no show dates from a Respondent's denial was fatal. Other Arbitrator's have diagreed, noting that a number of decisions in the Second Department provide ample support for finding that the omission of no show dates was not fatal. I

note that Arbitrator Maslow himself listed a significant number of court decisions in which the latter conclusion had been reached, citing, as examples, St. Locher Medical, P.C. v. IDS Property Casualty Ins. Co., 58 Misc.3d 129(A), 2017 N.Y. Slip Op. 51732(U) (App. Term 2d, 11th & 13th Dists. Dec. 8, 2017); JYW Medical, P.C. v. IDS Property Ins. Co., 58 Misc.3d 134(A), 2017 N.Y. Slip Op. 51800(U) (App. Term 2d, 11th & 13th Dists. Dec. 19, 2017); Actual Chiropractic, P.C. v. Mercury Casualty Co., 53 Misc.3d 135(A), 2016 N.Y. Slip Op. 51435(U) (App. Term 2d, 11th & 13th Dists. Sept. 27, 2016); and Quality Psychological Services, P.C. v. Avis Rent-A-Car Systems, LLC, 47 Misc.3d 129(A), 17 N.Y.S.3d 385 (Table), 2015 N.Y. Slip Op. 50378(U), 2015 WL 1422638 (App. Term 2d, 11th & 13th Dists. Mar. 12, 2015).

I note that several recently decided cases have endorsed the view that a denial is not defective by virtue of the omission of specific no show dates. See, for example, Case No. 17-24-1378-0071, wherein Arbitrator Roberts explained that

> "I note that Applicant's counsel argued that Respondent failed to establish their EUO defense because it failed to apprise the Provider sufficiently of the reason for the denial, by not referencing the alleged EUO no-show dates within the NF-10 denial of claim form. However, I respectfully disagree with counsel on this matter. Respondent issued a denial which stated the claim was denied based upon the failure of the Provider to appear at an EUO. I find this to be sufficient. The Applicant Provider was informed of the reason for the denial and the requirement of the EUO dates was not fatal to this defense.
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> "The failure in a denial of claim to set forth the dates of the scheduled EUOs at which the assignor failed to appear does not render it conclusory, vague, or without merit as a matter of law. Actual Chiropractic, P.C. v. Mercury Casualty Co., 53 Misc.3d 135(A), 2016 N.Y. Slip Op. 51435 (U) (App. Term 2d, 11 and 13 Dists. Sept 27, 2016). A th th denial of claim form based upon the failure to appear for scheduled EUOs need not set forth the dates of the EUOs. JYW Medical, P.C. v. IDS Property Ins. Co., 58 Misc.3d 134(A), 2017 N.Y. Slip Op. 51800(U) (App Term 2d, 11 & 13 Dists. Dec. 19, 2017). th th See also, St. Lochler Medical P.C. v. IDS Property Casualty Ins. Co., 58 Misc.3d 129 (A), 2017 N.Y. Slip Op. 51732(U) (App. Term 2d, 11 & 13 Dists. Dec. 8, 2017)."

In Case No. 17-15-1007-2915, Arbitrator Horn similarly noted that

> "In a case strikingly on point, Quality Psychological Servs., P.C. v. Avis Rent-A-Car Sys. , LLC, 47 Misc.3d 129(A), 2015 NY Slip Op 50378(U) (2d, 11th & 13th Jud Dists. March 12, 2015), the court in reversing a lower court's determination that a denial asserting that the provider's assignor had failed to appear for two properly scheduled examinations under oath was "fatally defective" held that "the failure to set forth the dates of the scheduled examinations in the denial of claim form did not render the denial conclusory, vague or without merit as a matter of law." Id.
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> "Likewise, in the instant case, I find that the failure to set forth the dates of the independent medical examinations did not render the denial defective since the

> omissions were "inconsequential and posed no possibility of confusion or prejudice to the (provider) under the circumstances of this case". See Natural Therapy Acupuncture, P.C. v. Interboro Ins. Co., 36 Misc.3d 135(A), 2012 NY Slip Op 51350(U) (App Term 2d, 11th & 13th Jud Dists. July 13, 2012); St. Barnabas Hosp. v. Penrac, Inc., 2010 NY Slip Op 09122 (2d Dept., Dec. 7, 2010)."

Finally, in Case No. 17-25-1381-0396, Arbitrator Simmons stated the following;

> "Applicant argues that the denial lacks specificity as the dates of the purported non-appearance were not included. As such, Applicant argues, the denial is vague and does not apprise the Applicant with a high degree of specificity the ground or grounds on which the disclaimer is predicated as required by the Court in General Accident Insurance Group v. Cirucci, 46 N.Y.2d 862, 864, 414 N.Y.S.2d 512, 514 (1979)...
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> "After review and consideration of the argument made by the Applicant, I find the language on the denials to be sufficient. Notification was given to the parties that benefits were terminated based upon the IP's failure to appear for IMEs. I find this language clearly apprises the Applicant why the benefits were being terminated and did not, '… prejudice the claimant's ability to ultimately obtain recovery.'"

:

> "More specifically, I find that Respondent's denials were clear in stating the basis/grounds for the denials, which was that the Injured Party failed to submit to multiple requests for medical examinations. I find no defect as Applicant contends. I therefore find that the denials meet Respondent's burden, as set forth in Cirucci, supra, as they contain a "high degree of specificity" regarding the ground upon which the disclaimer is based. I do not find that the omission of the IME dates renders the denials defective. Additionally, the Regulations provide that an insurer's non-substantive technical or immaterial defect or omission in a denial of claim form shall not affect the validity of a denial of claim. [See: 11 NYCRR 65-3-8(h).] Here, it is determined that the grounds for the denials were clearly stated."

It is notable that each of the above cited Awards were involved no show denials issued by the present Respondent. Furthermore, it is also notable that, on several previous occasions, I have myself adopted the view that the omission of specific dates from a no show denial was not fatal. See, for example, Case No. 17-22-1248-9179, wherein I stated the following:

> "With respect to that issue, I am guided by the decision of the Appellate Term, Second Department, in the case of Actual Chiropractic, P.C. v Mercury Cas. Co. 2016 NY Slip Op 51435(U), decided on September 27, 2016, wherein the Court noted that
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> > "...contrary to the conclusion of the Civil Court, "the failure to set forth the dates of the scheduled examinations in the denial of claim form[s] did not render the denial[s] conclusory, vague, or without merit as a matter of law"

(Quality Psychological Servs., P.C. v Avis Rent-A-Car Sys., LLC, 47 Misc 3d 129[A], 2015 NY Slip Op 50378[U]."

"I note that the above cited conclusion of the Appellate Term has been previously followed by Arbitrators Tuttolomondo, Hennessy, and Saxon in Case No.'s 17-22-1261-1528, 17-23-1284-5102, 17-19-1132-1886, and by myself in Case No. 17-23-1295-2166."

In the present case, I adhere to the reasoning contained in the above quoted cases, and so continue to be persuaded that the omission of specific no show dates from a Respondent's denial does not render that denial legally defective. I note that the present denials plainly advise the Applicant that its claim was being denied based on the"Failure to submit to multiple requests for Medical Examinations." Under all of the facts and circumstances herein, I therefore find that the presently disputed denials were not conclusory, vague, or otherwise without legal merit. I note further that, as aforementioned, there is no dispute either as to the mailing and receipt of the Respondent's IME notification letters, or as to the Assignor's subsequent failure to appear for the IME's presently in question. Ultimately, I credit the Respondent's unrebutted and unchallenged evidence in regard to the no show defense at issue herein, and so find that the Respondent has credibly established each of the required elements of its asserted defense, including the timely mailing and receipt of the scheduling letters, and the subsequent failure of the Assignor to appear for two duly scheduled IME's.

Any additional issues not referred to hereinabove are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

The Applicant's claim is therefore 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 New York

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

08/13/2025
(Dated)

John Langell

**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:**
05b727da103e0e852bdb94231b1805c6

**Electronically Signed**

Your name: John Langell
Signed on: 08/13/2025