

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

(Applicant)	AAA Case No.	17-19-1127-8905
- and -	Applicant's File No.	n/a
American Transit Insurance Company (Respondent)	Insurer's Claim File No.	104445502
	NAIC No.	16616

ARBITRATION AWARD

I, Thomas Awad, 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: GF

1. Hearing(s) held on 04/28/2020
Declared closed by the arbitrator on 04/28/2020

Ian Besso from The Sigalov Firm PLLC participated by telephone for the Applicant

Erisa Ahmedi from American Transit Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,275.36**, 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 Assignor, GF was involved in a motor vehicle accident on 11/6/18. At issue in this case is \$1,275.36 for Durable Medical Equipment (DME) provided on 12/5/18. Respondent denied the claim based upon the failure of the Assignor to attend Examination Under Oath (EUO). The issue presented is whether the Respondent can establish the defense that the Assignor failed to appear for the EUO.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon 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. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

The Respondent denied the claims on the basis that the Assignor failed to appear for an Examination Under Oath (EUO).

11 NYCRR 65-3.5 (c) states "The insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." See also, *Nyack Hospital v. State Farm Mutual Automobile Ins. Co.*, 19 A.D.3d 569, (2d Dept. 2005), an insurer is not obligated to pay or deny a claim until it has received verification of all relevant information requested.

11 NYCRR § 65-1.1 states ("no action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage"), Thus, if a provider fails to comply with an insurer's timely and valid request for an EUO, so long as the request strictly complies with the governing regulations, the insurer is entitled to dismissal of an action seeking No-Fault benefits on behalf of the provider as an EIP's assignee. Thus, the failure of the EIP to comply with a request for a properly scheduled EUO precludes an action against an insurer for payment for health services, so long as the request strictly complies with the governing regulations; See *Great Wall Acupuncture, P.C. v. New York Cent. Mut. Fire Ins. Co.*, 22 Misc. 3d 136(A) (App. Term 2d Dept., Feb. 20, 2009); *Inwood Hill Med. P.C. v. General Assur. Co.*, 10 Misc. 3d. 18 (App Term 1st Dept. Oct. 20, 2005); *Stephen Fogel Psychological, P.C. v. Progressive Ins. Co.*, 7 Misc. 3d. 18 (2d Dept., 2006); *Hosp. for Joint Diseases et. al. v. State Farm Mut. Auto Ins. Co.*, 8 A.D. 3d. 533 (2d Dept., 2004).

11 NYCRR 65-3.5 (e) Claim procedure mandates the following "All examinations under oath and medical examinations requested by the insurer shall be held at a place and time reasonably convenient to the applicant... The insurer shall inform the applicant at the time the examination is scheduled that the applicant will be reimbursed for any loss of earnings and reasonable transportation expenses incurred in complying with the request. When an insurer requires an examination under oath of an applicant as an additional verification to establish proof of claim, such requirement must be based upon the application of objective standards so that there is a specific objective justification supporting the use of such examination. Insurer standards shall be available for review by Department examiners." See, *NY Ins Gen Counsel Op No. 05-02-21* (2005), See also *Park v. Long Island Ins. Co.*, 2004 NY Slip Op 09485 (2d. Dep't, 2004) (an insurer must re-schedule EUO following an assignor's failure to appear in

order to meet "its heavy burden of demonstrating that (the examinee) engaged in a pattern of unreasonable and willful noncooperation so as to warrant denial of the claim").

The Respondent submitted scheduling letters and mail logs stamped by the U. S. Postal Service to establish that the letters were properly addressed and mailed.

The EUO was scheduled for 2/1/19 and 3/13/19. At the hearing no issue was raised as to the timeliness of the EUO requests.

The Respondent submits a transcript of dated 2/1/19 wherein the attorney assigned to take the testimony of the Assignor affirmed that no one on behalf of the Assignor appeared.

Respondent failed to submit proof that the Assignor failed to appear for the 3/13/19 EUO.

I find that Respondent has failed to demonstrated that the Assignor failed to appear for two properly scheduled EUOs and therefore, failed to sustain its burden of proof.

Accordingly, the Applicant's claim is hereby granted in the amount of \$1,275.36.

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
		12/05/18 - 12/05/18	\$1,275.36	Awarded: \$1,275.36
Total			\$1,275.36	Awarded: \$1,275.36

B. The insurer shall also compute and pay the applicant interest set forth below. 05/02/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date the AR-1 was deemed filed with the American Arbitration Association, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

The Applicant's attorney is entitled to one attorney fee in accordance with 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 New York

SS :

County of Nassau

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

05/05/2020

(Dated)

Thomas Awad

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:
e8a151c650f8fbb917c53a857ad6f658

Electronically Signed

Your name: Thomas Awad
Signed on: 05/05/2020