

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

St. Kyrollos Physical Therapy, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1042-4787
Applicant's File No. AR16-7687
Insurer's Claim File No. 0509226750101013
NAIC No. 35882

ARBITRATION AWARD

I, Stacey Charkey, 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 10/03/2017
Declared closed by the arbitrator on 10/03/2017

Melissa Jones, Esq. from The Beynenson Law Firm, PC participated in person for the Applicant

Augustine Ardizzone, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 405.60**, 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 Applicant is entitled to further medical services denied based upon a violation of the so-called "8 unit rule."

4. Findings, Conclusions, and Basis Therefor

Applicant seeks further reimbursement for medical services performed in connection with injuries sustained in a motor vehicle accident. Respondent

asserted that fees charged not in accordance with the fee schedule in that there was a violation of the so-called "8 unit rule". There were no witnesses and no testimony was taken. I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing. This decision is rendered based upon those documents and the parties' arguments at the hearing.

An applicant establishes its entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of No-Fault benefits were overdue. *Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co.*, 2013 NY Slip Op 08430 (App Div 2d Dept., Dec. 18, 2013); *Sound Shore Med. Ctr. v. New York Cent. Mut. Fire Ins. Co.*, 2013 NY Slip Op 02390 (App Div 2d Dept., April 10, 2013); *Sunshine Imaging Association/WNY MRI v. Government Employees Ins. Co.*, 66 A.D.3d 1419, 885 N.Y.S.2d 557 (4th Dept. 2009); *Westchester Medical Center v. Lincoln General Ins. Co.*, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); *Westchester Medical Center v. Clarendon National Ins. Co.*, 57 A.D.3d 659, 868 N.Y.S.2d 759 (2d Dept. 2008); *New York and Presbyterian Hosp. v. Allstate Ins. Co.*, 31 A.D.3d 512, 818 N.Y.S.2d 583 (2d Dept. 2006); *LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co.*, 30 A.D.3d 727, 816 N.Y.S.2d 587 (3d Dept. 2006); *Nyack Hospital v. Metropolitan Property & Casualty Insurance Co.*, 16 A.D.3d 564, 791 N.Y.S.2d 658 (2d Dept. 2005); *New York Hospital Medical Center of Queens v. Motor Vehicle Accident Indemnification Corp.*, 12 A.D.3d 429, 784 N.Y.S.2d 593 (2d Dept. 2004); *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004).

Proof that payment of a claim was overdue is an obligatory element, in the absence of which an applicant's case fails; neither the admission of a bill into evidence nor an applicant's prosecution of the action gives rise to an inference that the bill was overdue. *Omni Chiropractic, P.C. v. Travelers Ins. Co.*, 25 Misc.3d 142(A), 2009 N.Y. Slip Op. 52505(U), 2009 WL 4824301 (App. Term 2d, 11th & 13th Dists. May 8, 2009).

The submission of Respondent's NF-10 denial of claim form which admitted the receipt of the relevant claim form, established *prima facie* that the insurer received the claim referenced therein as having been submitted by the provider and that the insurer did not pay the claim. See New York

Diagnostic Med. Care, P.C. v. Geico Ins. Co., 2013 NY Slip Op 23360 (App Term 2d, 11th & 13th Jud Dists. Oct. 8, 2013); Lopes v. Liberty Mutual Ins. Co., 24 Misc.3d 127(A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009).

Accordingly, I find that Applicant has established its entitlement *prima facie* to No-Fault benefits. Applicant's remaining claims were partially reimbursed at a reduced rate or not reimbursed at all as respondent contends a violation of the so called "8 unit rule", which provides that when multiple physical medicine procedures and/or modalities are performed on the same day, reimbursement is limited to a maximum of eight units or the amount billed, whichever is less.

The New York State Worker's Compensation fee schedule, physical medicine, Ground Rule 11 provides that when multiple physical medicine procedures and/or modalities are performed on the same day, reimbursement is limited to 8.0 units or the amount billed, whichever is less. The New York State Worker's Compensation Chiropractic fee schedule, physical medicine, Ground Rule 3 states the same.

The following codes represent the physical medicine procedures and modalities subject to Ground Rule 11:

97010 97012 97014 97016 97018 97022

97024 97026 97028 97032 97033 97034

97035 97036 97039 97110 97112 97113

97116 97124 97139 97140 97150 97530

97535 97537 97542 97760 97761

The following codes represent the physical medicine procedures and modalities subject to Ground Rule 3:

97010 97012 97014 97024

97026 97028 97032 97033

97034 97035 97036 97039

97110 97112 97113 97116

97124 97139 97140 97530

98940 98941 98942

The Workers' Compensation Board has addressed this issue and indicated that if a claimant is treating with a chiropractor and physical therapist and they both bill modality CPT code(s) that are subject to the RVU per day limitations in the Fee Schedule, both may not be paid. The carrier may object to the bills based on concurrent care. The treating providers may request arbitration, and the arbitration panel will decide if the services were duplicative. If the physical therapist and the chiropractor are providing different treatments, it would not be considered concurrent care. If both a physical therapist and chiropractor provide treatment on

the same day, an insurer may deny the claim based on the eight (8) unit rule claiming the treatment was concurrent care if the treatment was rendered to the same body parts. If the services are provided by a physical therapist and a chiropractor on the same day to different body parts it is not considered concurrent care and therefore not subject to the not subject to the eight (8) unit rule.

Respondent has failed to submit sufficient evidence in support of its defense. While payment was purportedly made to another provider on the date in question, Respondent has not shown either that said provider was paid or that the other services were concurrent or to the same body parts. A denial must be supported by competent evidence in order for the Respondent to sustain its burden of proof. Here the only evidence was the explanation of benefits, which stated a violation of the 8 unit rule and proof of payment to another provider for an unknown physical therapy service. In *St. Vincent Medical Care, P.C. v. Country Wide Ins. Co.*, 2010 N.Y. Slip Op. 50488(U), 2010 WL 1063914 (App. Term 2d, 11th & 13th Dists. Mar. 19, 2010) the Court held an insurer fails to establish the existence of an issue of fact with respect to a defense that fees charged were excessive and not in accordance with the Workers Compensation fee schedule in the absence of proof establishing the defense.

In reviewing the evidence I find that Respondent has failed to sustain its burden of proof and that Applicant billed in accordance with established fee schedules. The Respondent did not submit any evidence of payments to other providers for treatment to the same body parts/functions as those provided by applicant on the date of service in question.

I find respondent's evidence insufficient to establish that the provider exceeded the maximum allowable charges per day. Accordingly, Applicant is awarded the balance of \$294.42 as it appears that Respondent has already issued a payment for a portion of the services.

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
	St. Kyrollos Physical Therapy, PC	04/23/15 - 05/20/15	\$405.60	Awarded: \$294.42
Total			\$405.60	Awarded: \$294.42

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 08/24/2016, which is a relevant date only to the extent set forth below.)

Where a claim is timely denied, interest shall begin to accrue as of the date the adjudication is commenced by the claimant, to wit: the date the claim is received by the American Arbitration Association, unless arbitration is commenced within 30 days as of the date the denial is received by the claimant. 11 NYCRR 65-3.9c. LMK Psychological Services P.C. v. State Farm Mut. Auto Ins. Co., 12 NY3d 217, 879 NYS2d 14 (2009). The end date for the calculation of the period of interest shall be the date of payment of the claim. In calculation the interest, the date of accrual shall be excluded from the calculation. Accordingly, at bar, unless specifically noted in the body of this award, the filing date above shall be utilized as the date of accrual for the purpose of calculating interest. Where applicable, if noted within the body of this award, said date of accrual of interest shall be controlling.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicants an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6 (as existing on the filing date of this arbitration), subject to a maximum fee of \$1,360.00.

- 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 Queens

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

10/31/2017
(Dated)

Stacey Charkey

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:
3c361807e26e165af8b0d8d438dff62e

Electronically Signed

Your name: Stacey Charkey
Signed on: 10/31/2017