

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sun Orthopedic Surgery PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1047-8073

Applicant's File No.

Insurer's Claim File No. 0435709710101016

NAIC No. 35882

ARBITRATION AWARD

I, Steven Greif, 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 01/19/2018
Declared closed by the arbitrator on 01/19/2018

Chris Economou from Economou & Economou PC participated in person for the Applicant

Jason Corrar from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,058.79**, 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

Did respondent prove it paid for the IP's right knee surgery performed by applicant at the proper rates set by the New York Workers' Compensation Medical Fee Schedule ("fee schedule")?

4. Findings, Conclusions, and Basis Therefor

The IP was a 30 year-old man when he was injured in a car accident on July 9, 2016. On August 19, 2016 applicant performed arthroscopic surgery on the IP's right knee. Applicant billed respondent \$5,530.13, utilizing five (5) CPT codes. Respondent paid

for the first code used, CPT code 29880, at the fee schedule rate of \$2,471.34, but refused to pay for all of the other CPT codes billed, based upon a Surgical File Review performed by Dr. William Walsh, M.D., an orthopedic surgeon.

Dr. Walsh agreed that the right knee surgery was appropriate, but alleges that other than the code billed and paid, 29880, the other codes billed, 29879-59; 29876-59; 29874-59; and 27570-59, should not be paid. Dr. Walsh alleges that CPT codes 27570-59 and 29879-59 are included within 29880; and 29876-59 and 29874-59 are not demonstrated by the operative report.

The fee schedule indicates modifier 59 applies to a distinct procedural service. The fee schedule states for modifier 59,

"Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent of other non-E/M services performed on the same day. Modifier 59 is used to identify procedures for services, other than E/M services that are normally reported together, but are appropriate under the circumstances. Documentation must support a different session, different procedure for surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual."

Dr. Walsh states that CPT code 29879, shaving of the articular cartilage, should be disallowed, as it is included in CPT code 29880. He also states that there was no drilling or microfracture indicated in the operative note.

CPT code 29880 is a subset of 29871, which refers to surgical knee arthroscopic for infection, lavage, and drainage. CPT code 29880 states:

"with meniscectomy (medial AND lateral, including any meniscal shaving) including debridement/shaving of articular cartilage (chondroplasty) same or separate compartment (s), when performed."

CPT code 29879 states: "abrasion arthroplasty (includes chondroplasty where necessary) or multiple drilling or microfracture."

Applicant argues that modifier 59 advises that 29879 is a separate and distinct procedure. Counsel for applicant alleges the operative report shows at least 2 incisions and 1 excision. There were 3 compartments of the knee that revealed significant synovitis.

Dr. Walsh never discussed the relevance of modifier 59. Accordingly, respondent failed to prove applicant was not entitled to recover under CPT code 29879 - 59.

The next CPT code discussed by Dr. Walsh was 29876, which in the fee schedule is listed as synovectomy, major, 2 or more compartments (e.g., medial or lateral). Dr. Walsh claims this procedure was not documented in the operative report, and states

there was no documentation of any inflammatory synovial disease such as rheumatoid arthritis or pigmented villonodular synovitis.

The operative report indicates there was significant synovitis in 3 compartments of the knee. A partial synovectomy was performed. CPT code 29876 refers to a major synovectomy of 2 or more compartments. Once again, Dr. Walsh never discussed the relevance of modifier 59. Accordingly, respondent failed to prove applicant was not entitled to recover under CPT code 29876 - 59.

In respect to CPT code 29874-59, Dr. Walsh states there was no documentation of any loose body of 5 mm or greater and there is no separate incision made for the removal of loose body. The small loose bodies found were "merely debrided with the arthroscopic shaver."

CPT code 29874 states, "for removal of loose body or foreign body (e.g. osteochondritis dissecans fragmentation, chondral fragmentation)."

I accept Dr. Walsh's analysis that these loose bodies were removed with the shaver, and that applicant is not entitled to bill separately under CPT code 29874.

The final CPT code reviewed by Dr. Walsh, and disallowed according to his recommendation, is CPT code 27570 - 59, which he alleges was included in CPT code 29880. CPT code 27570 states "manipulation of the knee joint under general anesthesia (includes application of traction or other fixation devices)."

I see no mention in CPT code 29880 of any manipulation of the knee joint. Accordingly, I reject Dr. Walsh's analysis, and find that applicant is entitled to be paid for CPT code 27570.

Applicant is awarded \$2198.79.

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
	Sun Orthopedic Surgery PC	08/19/16 - 08/19/16	\$3,058.79	Awarded: \$2,198.79
Total			\$3,058.79	Awarded: \$2,198.79

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 11/29/2016, which is a relevant date only to the extent set forth below.)

In accordance with 11 NYCRR 65-3.9(c), since applicant did not request arbitration within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations, interest shall not accumulate on the disputed claim or element of claim until the date arbitration was demanded by applicant, which was 11/29/16. See LMK Psychological Services v. State Farm Insurance, 12 N.Y. 3d 217 (2009); East Acupuncture, P.C. v. Allstate Ins. Co., 61 A.D. 3d 202, 873 N.Y.S. 2d 335 (2d Dept. 2009).

C. Attorney's Fees

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

The applicant is entitled to recover 20% of the award as an attorney's fee.

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

02/14/2018

(Dated)

Steven Greif

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:
7392dff63d56509d7f2305e19aee36de

Electronically Signed

Your name: Steven Greif
Signed on: 02/14/2018