

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

OBB Acupuncture P.C.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

| | |
|--------------------------|------------------|
| AAA Case No. | 17-17-1059-0756 |
| Applicant's File No. | None |
| Insurer's Claim File No. | 0412905110101013 |
| NAIC No. | 35882 |

ARBITRATION AWARD

I, Aaron Maslow, 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 ["AB"]

1. Hearing(s) held on 02/26/2018
Declared closed by the arbitrator on 02/26/2018

David Karp, Esq., from Fuld & Karp PC participated by telephone for the Applicant

James Ciscone, Esq., from Law Office of Goldstein & Flecker participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,913.36**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant reduced the amount in dispute to \$268.85, as follows: an additional \$38.95 for an office visit of May 11, 2016, and \$229.90 for dates of service Sept. 13, 2016-Nov. 8, 2016.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills. They also stipulated that Respondent's Form NF-10 denial of claim forms were timely issued, i.e., within the 30-day deadline prescribed by Insurance Law §5106(a) and 11 NYCRR 65-3.8(a)(1). Additionally, they

stipulated that should Applicant prevail, interest would accrue as of the filing date set forth by the American Arbitration Association in Part B of the conclusion of the award template.

3. Summary of Issues in Dispute

- Whether Applicant established entitlement to additional No-Fault insurance compensation for an office visit performed to treat Assignor
- Whether to sustain Respondent's imposition of the eight-unit rule with respect to four bills for acupuncture and related services

4. Findings, Conclusions, and Basis Therefor

For Applicant:

Fuld & Karp, P.C.
1963 Coney Island Avenue
Brooklyn, NY 11223
By: David Karp, Esq. (by telephone)

For Respondent:

Law Office of Goldstein & Flecker
170 Froehlich Farm Boulevard
Woodbury, NY 11797
By: James Ciscone, Esq.

Applicant, a professional business entity owned by a licensed acupuncturist, commenced this New York No-Fault insurance arbitration, seeking as compensation \$1,913.36 remaining unpaid from that which it billed for performing acupuncture services from May 11, 2016 to Nov. 8, 2016, to treat Assignor, a 64-year-old male who was injured in a motor vehicle accident on May 2, 2016. At the hearing, Applicant reduced the amount in dispute to \$268.85, as follows: \$38.95 remaining for an office visit of May 11, 2016; and \$229.90 for dates of service Sept. 13, 2016-Nov. 8, 2016. With respect to the four bills for this latter period of time, Respondent had reduced payment on the basis of the eight-unit rule.

This arbitration was conducted under the auspices of the American Arbitration Association, which has been designated by the New York State Department of Financial Services to administer the mandatory arbitration provisions of Insurance Law § 5106(b), which provides:

Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party ["No-Fault insurance"] benefits, or additional first party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section to arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent.

Both parties appeared at the hearing by counsel, who presented oral argument and relied upon documentary submissions. I have reviewed the submissions' documents contained in the American Arbitration Association's ADR Center as of the date of the hearing, said submissions constituting the record in this case.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills. They also stipulated that Respondent's Form NF-10 denial of claim forms were timely issued, i.e., within the 30-day deadline prescribed by Insurance Law §5106(a) and 11 NYCRR 65-3.8(a)(1).

Applicant billed \$61.43 for a CPT Code 99202 acupuncture office visit of May 11, 2016. Respondent paid \$22.48, deeming the service to have performed Code 97813 acupuncture itself. Its denial of claim asserted: "This procedure as billed is considered to be part of a more comprehensive service provided. Reimbursement is based on the more comprehensive service." At the hearing, Respondent stated that it had nothing in support of the stated defense. The maximum permissible charge for a Code 99202 office visit when performed by a chiropractor is \$42.02. I find that to be the proper charge for Applicant, a professional business entity owned by a licensed acupuncturist. See Great Wall Acupuncture, P.C. v. GEICO Ins. Co., 26 Misc.3d 23 (App. Term 2d, 11th & 13th Dists. 2009). Applicant is awarded \$19.54, the difference between \$42.02 and \$22.48, taking into account that Applicant established a prima facie case of entitlement to No-Fault compensation.

The remainder of this arbitration involves dates of service Sept. 13, 2016 to Nov. 8, 2016. With respect to the four bills for this latter period of time, Respondent had reduced payment on the basis of the eight-unit rule. Applicant seeks an additional \$229.90, a figure which takes into account the maximum permissible charge for the services as performed by a chiropractor. More specifically, the following amounts were sought: \$37.98 for dates of service Sept. 13, 2016 to Sept. 22, 2016; \$75.96 for Sept. 26, 2016 to Oct. 13, 2016; \$90.64 for Oct. 14, 2016 to Oct. 27, 2016; and \$25.32 for Oct. 31, 2016 to Nov. 8, 2016.

The eight-unit rule, contained in Ground Rule 11 of the Physical Medicine chapter of the Workers' Compensation Medical Fee Schedule, and in Ground Rule 3 of the Physical Medicine chapter of the Workers' Compensation Chiropractic Fee Schedule, limits reimbursement to eight relative value units, and specifies the CPT

codes subject to the rule. However, neither of these fee schedules governs self-employed licensed acupuncturists or their business entities, such as Applicant. There is no Workers' Compensation or No-Fault fee schedule governing self-employed licensed acupuncturists or their business entities. That is why payment for acupuncture became the subject of much litigation. See, e.g., Akita Medical Acupuncture, P.C. v. Clarendon Ins. Co., 41 Misc.3d 134(A), 2013 N.Y. Slip Op. 51860(U) (App. Term 1st Dept. Nov. 14, 2013); Great Wall Acupuncture v. GEICO General Ins. Co., 16 Misc.3d 23 (App. Term 2d & 11th Dists. 2007); Allstate Ins. Co. v. Natural Healing Acupuncture, P.C., 39 Misc.3d 1217(A), 2013 N.Y. Slip Op. 50645(U) (Civ. Ct. Kings Co., Katherine A. Levine, J., Apr. 3, 2013).

The No-Fault Law is in derogation of the common law and so must be strictly construed. Presbyterian Hospital in the City of New York v. Atlanta Casualty Co., 210 A.D.2d 210, 211 (2d Dept. 1994). I am required to strictly construe the fee schedules and in doing so I hold as a matter of law that the eight-unit rule set forth in the Medical and Chiropractic Fee Schedules does not apply to Applicant, which is owned by a self-employed licensed acupuncturist.

Inasmuch as Applicant established a prima facie case of entitlement to compensation and I reject the eight-unit rule asserted by Respondent, I award \$ 229.90.

Accordingly, the within arbitration claim is granted to the extent of awarding Applicant \$249.44 in health service benefits.

This arbitrator has not made a determination that benefits provided for under Article 51 (the No-Fault statute) of the Insurance Law are not payable based upon the assignor's lack of coverage and/or violation of a policy condition due to the actions or conduct of Assignor. As such and in accordance with the provisions of the prescribed NYS Form NF-AOB (the assignment of benefits), Applicant health provider shall not pursue payment directly from Assignor for services which were the subject of this arbitration, notwithstanding any other agreement to the contrary.

Interest: The parties stipulated that should Applicant prevail, interest would accrue as of the filing date set forth by the American Arbitration Association in Part B of the conclusion of the award template. The filing date is April 6, 2017. The end date for the calculation of the period of interest shall be the date of payment of the claim. In calculating interest, the date of accrual shall be excluded from the calculation. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.") Where a motor vehicle accident occurs after Apr. 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a); Gokey v. Blue Ridge Ins. Co., 22 Misc.3d 1129(A), 2009 N.Y. Slip Op. 50361(U) (Sup. Ct. Ulster Co., Henry F. Zwack, J., Jan. 21, 2009).

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

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 | Amount Amended | Status |
|--------------|---------------------------------|--------------------------------|-------------------|-----------------|------------------------------|
| | OBB Acupuncture P.C. | 05/11/16 - 11/08/16 | \$1,913.36 | \$268.85 | Awarded: \$249.44 |
| Total | | | \$1,913.36 | | Awarded: \$249.44 |

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 04/06/2017, which is a relevant date only to the extent set forth below.)

Respondent shall pay Applicant interest on the total first-party benefits awarded herein, computed from April 6, 2017 to the date of payment of the award, but excluding April 6, 2017 from being counted within the period of interest. The interest rate shall be two percent per month, simple (i.e., not compounded), on a pro rata basis using a 30-day month.

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 Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d) (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 Kings

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

03/07/2018
(Dated)

Aaron Maslow

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:
550fa08f84ca951199953d08feaeaa03

Electronically Signed

Your name: Aaron Maslow
Signed on: 03/07/2018