

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RES Physical Medicine & Rehab. Services
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-18-1084-9412

Applicant's File No. None

Insurer's Claim File No. 522B67959

NAIC No. 25143

ARBITRATION AWARD

I, Brian Bogner, 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: EIP

1. Hearing(s) held on 07/20/2018
Declared closed by the arbitrator on 07/20/2018

Shannon Fuhrman, Esq. from Fuhrman Law participated by telephone for the Applicant

Mohammad Rubbani, Esq. from Richard T. Lau & Associates participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 401.98**, 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 Eligible Injured Person (EIP) is a twenty-eight (28) year old who was injured in a motor vehicle accident on January 17, 2013. At issue is whether the Applicant timely submitted its bill for date of service August 25, 2017 and the proper reimbursement amount for drug screening and injections performed on that date.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents uploaded to the ADR Center maintained by the American Arbitration Association. This case was decided based upon the documents

uploaded to the ADR Center and the oral arguments of the parties' representatives at the hearing.

This case was heard in conjunction with AAA Case Nos.: 17-17-1054-3451, 17-17-1082-2581 and 17-18-1085-5734.

This case arises out of a motor vehicle accident that occurred on January 17, 2013. The EIP was stopped at a red light when her vehicle was rear-ended. The EIP eventually came under the care of the Applicant for pain management treatment. On August 25, 2017, intra-ligamentous injections and drug screening were performed by the Applicant.

The Respondent claims that it never received the bill for the drug screening performed on August 25, 2017. In support of its defense based on non-receipt of the bill for the August 25, 2017 drug screening, the Respondent submitted an Affidavit from Jeremiah Easterly, a Claims Specialist employed by the Respondent. Mr. Easterly stated that he reviewed the file and computer records of the instant claim and, based on his review, the file does not contain the subject bill. The Respondent also claims the amount billed for the drug screening exceeds the amount allowable under the fee schedule.

With respect to the bill for the intra-ligamentous injections, the Respondent reimbursed the Applicant \$691.17 of the \$766.67 billed. The Respondent denied reimbursement for code 99070 in the amount of \$75.50 based on the fee schedule.

Bill for Drug Screening

An applicant establishes "a *prima facie* showing of their entitlement to judgment as 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." Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D.3d 742 (2nd Dept. 2004).

In its submission, the Applicant uploaded a fax dated September 12, 2017. The fax indicates the bill for the drug screening was successfully sent to fax number 1-888-272-1255. However, there is no indication that the fax number is a fax number associated with the Respondent. The bill for the intra-ligamentous injections, which was received by the Respondent, was faxed to a different fax number. Absent some evidence establishing that the bill was faxed to a fax number associated with the Respondent, I cannot conclude that the Applicant successfully faxed the bill for the drug screening to the Respondent. As such, I find that the Applicant has failed to establish a *prima facie case* with respect to the bill for the drug screening.

Bill for Intra-Ligamentous Injections

Code 99070 is described as "[s]upplies and materials (except spectacles), provided by the physician over and above those usually included with the office visit or other services rendered (list drugs, trays, supplies, or materials provided)."

Respondent's counsel argued at the hearing that code 99070 is not reimbursable because the supplies are included in another code billed.

The Respondent bears the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. Robert Physical Therapy P.C. v. State Farm Mut. Auto. Ins. Co., 13 Misc.3d 172, 175 (Civil Ct., Kings Co. 2006).

I find that the Respondent has failed to meet its burden with respect to its fee schedule defense for code 99070. There is no fee affidavit and Respondent's counsel did not adequately explain why code 99070 was not reimbursable. Respondent's counsel did not identify the supplies at issue or identify the other code that allegedly includes those supplies. In addition, Respondent's counsel did not cite to any specific portions of the fee schedule or any authority in support of his position that the supplies at issue are included in another code billed.

Based on the proof submitted in this case, the Applicant is awarded the amount claimed for code 99070.

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
	RES Physical Medicine & Rehab. Services	08/25/17 - 08/25/17	\$75.50	Awarded: \$75.50
	RES Physical Medicine & Rehab. Services	08/25/17 - 08/25/17	\$326.48	Denied
Total			\$401.98	Awarded: \$75.50

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/24/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Applicant is awarded interest pursuant to the no-fault regulations. *See* 11 NYCRR 65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR 65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." *See* 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

The insurer shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6.

- 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 Erie

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

07/27/2018

(Dated)

Brian Bogner

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:
2e4810cdd203c9d67db1e562edaf552f

Electronically Signed

Your name: Brian Bogner
Signed on: 07/27/2018