

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Journal Square Surgical Center LLC  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-17-1068-4807

Applicant's File No. DK17-23587

Insurer's Claim File No. 3203783D9

NAIC No. 25178

**ARBITRATION AWARD**

I, Matthew K. Viverito, 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 09/11/2018  
Declared closed by the arbitrator on 09/11/2018

John Faris from Korsunskiy Legal Group P.C. participated in person for the Applicant

Lisa Weiss from Richard T. Lau & Associates participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,804.86**, 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 respondent can establish that applicant's charges were excessive.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in MODRIA. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in MODRIA maintained by the American Arbitration Association.

The EIP, CR, a 43 year-old female, was involved in a motor vehicle accident on 12/10/16 as a driver. She thereafter received medical treatment from applicant on 3/29/17 in the amount of \$4,804.86. The services at issue consist of facility fees related to left knee surgery. It should be pointed out that applicant originally billed \$10,801.41 for the services at issue and was partially reimbursed in the amount of \$5,996.55. According to respondent, certain codes billed by applicant such as 29877, 29870, 20610 and A4649 should have been denied in their entirety. Respondent claimed that the above mentioned codes could not be separately billed.

In support of its fee schedule defense, respondent presented a fee schedule analysis by Mercy Acuna, RN, BSN, CPC dated 1/12/18. Ms. Acuna stated that the injection and surgical supplies are included in the facility fee. As to code 29877, Ms. Acuna stated that it is included in CPT code 29881. As to code 29870, Ms. Acuna stated that the diagnostic arthroscopy is an inclusive component of the surgical arthroscopy. According to Ms. Acuna, no further reimbursement is owed. I find Ms. Acuna's report to be credible and persuasive. At minimum, her report is sufficient to shift the burden to applicant to support its billing of the within claim.

Applicant, however, has not provided any rebuttal documentation on the issue of fee schedule.

Therefore, I find for respondent and the within claim is denied.

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 claim is DENIED in its entirety

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

09/13/2018  
(Dated)

Matthew K. Viverito

### **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:**  
826cd4a24091a7e176384c19fc33d460

### **Electronically Signed**

Your name: Matthew K. Viverito  
Signed on: 09/13/2018