

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Surgery Center
(Applicant)

- and -

State Farm Fire & Casualty Company
(Respondent)

AAA Case No. 17-17-1074-3007

Applicant's File No. SS-58162

Insurer's Claim File No. 32-9V34-138

NAIC No. 25143

ARBITRATION AWARD

I, Alina Shafranov, 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 10/16/2018
Declared closed by the arbitrator on 10/16/2018

Abraham Meir, Esq. from Samandarov & Associates, P.C. participated in person for the Applicant

Craig Stabenau, Esq. from Richard T. Lau & Associates participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 8,519.82**, 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 Assignor, "HG" a 29-year-old female was involved in a motor vehicle accident on February 20, 2017. The Assignor sought medical treatment for her injuries purportedly sustained in the motor vehicle accident and eventually came under the care of Gianni Persich, DPM, who performed an arthroscopic surgery on 6/30/17. Applicant seeks reimbursement for the facility fee associated with the surgery, which Respondent timely denied based upon a fee schedule defense predicated on the New Jersey Fee Schedule defense. The issue to be decided is whether Applicant is entitled to reimbursement pursuant to the New Jersey Fee Schedule.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely.

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See, Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). See also, Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (Civil Ct, Kings Co. 2006). If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims were in excess of the appropriate fee schedules, defendant's defense of noncompliance with the appropriate fee schedules cannot be sustained. See, Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't, per curiam, 2006).

An arbitrator can take judicial notice of the fee schedule. See Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D.3d 13, 20 (2d Dept. 2009); LVOV Acupuncture, P.C. v. Geico Ins. Co., 32 Misc.3d 144(A), 2011 NY Slip Op 51721(U) (App Term 2d, 11th & 13th Jud Dists. 2011); Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 NY Slip Op 50040(U) (App Term, 1st Dept. 2011).

Notice is taken that Applicant billed for CPT Codes 28072 and 28899 and A0100. Respondent issued a timely denial which is predicated on the following defense: "There is no facility fee for a procedure code in the Ambulatory Surgical Center (ASC) fee schedule; therefore, the service is not reimbursable in accordance with NJAC 11:3-29.5." Respondent's counsel argued that pursuant to the New Jersey Fee Schedule, Applicant is not entitled to reimbursement for the facility fee, and ambulatory services. Respondent's counsel argued that the codes billed by the Applicant are not reimbursable for an Ambulatory Surgery Center (ASC) under the New Jersey fee schedule. Specifically, there are no fees for these codes listed in the ASC column, and that the N.J.A.C. §11:3-29.5(a) and 29.4(e)(3) provide that services without a fee in the ASC column of the fee schedule are not reimbursable if performed in an ASC. Respondent's counsel also asserts that the Applicant submitted a bill which included a charge for CPT

Code A0100 (Non-emergency transportation; taxi) and that the New Jersey Fee Schedule does not allow for reimbursement of CPT Code A0100, and therefore under the statute the Applicant is not entitled to reimbursement.

Applicant's counsel argued that N.J.A.C. §11:3-29.5(a) and 29.4(e)(3) does not apply to the CPT Codes billed by Applicant. He argued that since these CPT Codes are not listed in the Fee Schedule, they are unlisted codes, however, the statute pertains only to CPT Codes actually listed in the Fee Schedule, but which do not possess a value in the corresponding ASC Fees column. Applicant has submitted the Affirmation by Aron Perretta, Esq. CPC dated September 14, 2018. Mr. Perretta asserts that since the CPT Codes billed by Applicant are not listed in the ASC column they are unlisted codes and do not fall under the purview of the Statute relied upon by the Respondent, instead he argued N.J.A.C. §11:3-29.4 (e)(1) is applicable to these CPT Codes. This statute states that unlisted CPT Codes are reimbursed at either the usual and customary fee, or a rate of payment equivalent to that of a similar procedure that is listed within the Fee Schedule.

After a thorough review of the evidence collectively, as well as a plain reading of the New Jersey Fee Schedule, I find that I am persuaded by the arguments of Respondent's counsel. I find that N.J.A.C. §11:3-29.5(a) and 29.4(e)(3) is applicable herein, and the only facility fees that are reimbursable for services performed in an ASC are those CPT codes that have facility fees listed in the ASC Facility Fee Column of Appendix, Exhibit 1. Since, The New Jersey Fee Schedule does not provide for reimbursement of the CPT codes billed by the Applicant herein, I am constrained to deny this claim in its entirety.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Respondent.

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

10/20/2018

(Dated)

Alina Shafranov

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:
41f25c41835d170832654ee7a9298444

Electronically Signed

Your name: Alina Shafranov
Signed on: 10/20/2018