

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Andrew J. Dowd M.D.  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-19-1115-9877

Applicant's File No. None

Insurer's Claim File No. 32-2290-T47

NAIC No. 25143

**ARBITRATION AWARD**

I, James Hogan, 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 10/25/2019, 12/12/2019  
Declared closed by the arbitrator on 10/25/2019

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

Anil Singh from James F. Butler & Associates participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,717.22**, was AMENDED and permitted by the arbitrator at the oral hearing.

**At the hearing, Applicant amended the amount in controversy to \$890.00, as per Dr. Dowd's fee audit.**

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The EIP, a 25 year old male, was injured in a collision on 12/7/17. This claim is for an initial office visit on 10/10/18, billed under CPT code 99204 at \$148.69.

In addition, the Applicant is billing for shoulder surgery performed on 10/13/18 in the form of:

Arthroscopy; debridement billed under CPT code 29823 at \$1,878.12;

Arthroscopy; with lysis of adhesions, billed on the CPT code 29825 at \$1,874.00;

Arthroscopy; synovectomy, billed under CPT code 29821 as \$1,780.00;

Arthroscopy; decompression of subacromial space with partial acromioplasty, billed under CPT code 29826 at \$451.13.

The total amount of the Applicant's billing was \$6,131.94.

**On 11/6/18, Respondent issued an NF-10 re DOS 10/10 - 10/13/18 and billing any amount of \$6,131.94.** Respondent paid \$3,414.72, leaving an amount in dispute of \$2,717.22.

As per the EOB, Respondent paid for the 10/10/18 office visit as billed at \$148.69.

As to CPT code 29823, billed at \$1,878.12, Respondent paid the amount billed.

As to CPT code 29825, billed at \$1,874.00, Respondent paid \$936.78, pursuant to the surgery multiple procedure rule. (Surgery Ground Rule #5.)

As to CPT code 29821, billed at \$1,780.00, Respondent denied payment stating that this procedure was included in another procedure on the same bill and the CPT code was considered a non-specific code and required additional documentation for consideration of reimbursement.

As to CPT code 29826, billed at \$451.13, Respondent paid the amount billed.

**The Respondent has submitted a fee audit from Stephanie Brown of Signet Claim Solutions, LLC.** She opines that the correct allowance for the services provided was \$2,478.02. she concludes that Respondent paid \$3,141.52, which was an overpayment of \$663.50.

**Dr. Dowd as filed the rebuttal to the fee audit.**

**Stephanie Brown has submitted an addendum to the fee audit.**

**At the hearing, Applicant amended the amount in controversy to \$890.00, as per Dr. Dowd's fee audit.**

#### 4. Findings, Conclusions, and Basis Therefor

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

##### **SUMMARY OF THE CASE:**

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**Applicant's submission:**

The Applicant has provided a copy of its billing. (see above)

**On 1/11/18, the EIP had an MRI of the left shoulder. He was referred for the MRI by Allan Weissman, MD.** The Impression was a 2 mm subacromial cyst at the insertion of the infraspinatus with no fracture or tear; 2) capsular thickening more notary interior, which can be seen with adhesive capsulitis.

**On 10/10/18, the EIP had a consultation with Dr. Dowd.** He reported being involved in an MVA. After the accident he went to the hospital where he was treated and released. At the time of the accident he injured his left shoulder and his low back. His left shoulder pain was severe and rated at 8-9/10. He has difficulty with his ADLs and weakness in the shoulder. He has difficulty with painful motion as well.

After the examination, the Diagnoses were: 1) left shoulder impingement syndrome; 2) lumbar sprain.

The Plan indicates the treatment options were discussed with the patient due to high level of pain refractory to conservative care; the patient wishes to proceed with diagnostic arthroscopy of the left shoulder.

**The Applicant has filed a copy of an Operative Report documenting surgery performed on 10/13/18 by Dr. Dowd to the EIP.**

The procedures performed were: 1) Arthroscopic debridement of partial rotator cuff tear; 2) arthroscopic debridement of labral tear; 3) arthroscopic synovectomy; 4) arthroscopic lysis of subacromial adhesions; 5) arthroscopic subacromial decompression.

The preoperative diagnosis was internal derangement of left shoulder.

The postoperative diagnoses were: 1) partial rotator cuff tear, left shoulder; 2) labral tear, left shoulder 3) synovitis, left shoulder; 4) impingement, left shoulder; 5) subacromial adhesions, left shoulder.

Copies of intra-operative photos have been provided.

**Respondent's submission:**

The Respondent's position is that the Applicant's claim was properly paid in accordance with the fee schedule.

The Respondent has provided a copy of the Applicant's billing, and its corresponding NF-10 and EOB.

Also provided is a copy of the CPT Assistant Online with regard to CPT code 64613 and 64999.

**Also provided is another page, this one dealing with Arthroscopic Shoulder Surgery with Acromioplasty.** In the Summary and Discussion section of this document, it defined CPT code 29826 as Arthroscopic, shoulder, surgical; decompression of subacromial space with partial acromioplasty, with or without coracoacromial release.

CPT code 29822 - 51: Arthroscopy, shoulder, surgical; debridement, limited.

"It would not be appropriate to report code 29815, Arthroscopy, shoulder, diagnostic, with or without synovial biopsy (separate procedure), in addition to the surgical arthroscopy code 29826 or 29822, since 29815 is designated as a 'separate procedures' and may not be additionally reported when the procedure/services performed as an integral component of another procedure/service. As with all arthroscopic procedures in the CPT manual, a diagnostic arthroscopy is considered to be an inclusive component of a surgical arthroscopy and would not be reported separately."

"The partial acromioplasty, arch decompression, excision of bursal tissue and release of the coracoacromial ligament would not be reported separately, as these are considered to be inclusive components of code 29826."

"When multiple procedures or services are performed at the same session by the same provider, the primary procedure would be reported as listed in CPT. The additional procedure(s) or service(s) may be identified by appending the modifier - 51, Multiple Procedures, to the additional procedure or service code(s).

**The Respondent is also provided a copy of the Surgery Ground Rules.**

**Also provided is a copy of the American Academy of Orthopedic Surgeons, Complete Global Service Data for orthopedic surgery, 2010 edition.**

**This document indicates that included in CPT code 29823 are:** Synovectomy, billed under CPT code 23105 and 29820; Arthroscopic debridement of labrum and/or SLAP lesion, billed under CPT code 29822; shoulder arthroscopy; diagnostic, billed under CPT code 29805; Arthroscopic lysis of adhesions, billed under CPT code 29825 and Manipulation under Anesthesia billed under CPT code 23700.

Not included in CPT code 29823 are: Arthroscopic acromioplasty, billed under CPT code 29826; Arthroscopic removal of loose foreign bodies, billed under CPT code 29819; Arthroscopic repair of rotator cuff, billed under CPT code 29827; Arthroscopic

distal clavicle excision, billed under CPT code 29824; Arthroscopic biceps tenodesis, billed under CPT code 29828.

The Respondent has also provided an arbitration decision from 2017 which supports its contentions as to the billing.

Copies of the fee schedule have been provided.

**Fee Audit from Stephanie Brown.** Ms. Brown is affiliated with Signet Claim Services, LLC, and is a CPC. She is also a Certified Professional Medical Auditor.

She lists her qualifications.

She has reviewed the Applicant's billing and the operative report.

Her review was to determine the allowable amount per the fee schedule. She notes that she is not a medical professional and is not able to make medical determinations on behalf of patient care. No medical records were reviewed for this review except where noted. (The 10/13/18 operative report is listed as a record that was reviewed in addition to the Applicant's billing.)

She also says that the report is solely based on the billing and the coding guidelines as set forth by the Official New York Worker's Compensation Medical Fee Schedule, Department Of Health, CMS and the AMA.

She also says that as per the NY Workers' Compensation Medical Fee Schedule, Introduction and General Guidelines (Paragraph 5) "This edition of the Official New York Workers' Compensation Medical Fee Schedule uses CPT procedure codes, modifiers and descriptions and, where appropriate, the American Society of Anesthesiologists Relative Value Guide. Please refer to the CPT book for an explanation of coding rules and regulations not listed in the schedule."

Ms. Brown lists the date of service, the CPT code that was billed, the amount billed, the definition of the CPT code, the correct CPT code, the correct reimbursement and the "Rationale."

As to DOS 10/10/18, the billing for the office visit is indicated as correctly billed.

As to the surgery, CPT code 29823 was billed properly and paid properly.

CPT code 29825 was billed at \$1,874.00. This was for the lysis of adhesions. The recommendation for reimbursement was \$0.00. The reason was that according to the Complete Global Service Data for Orthopedic Surgery, 2015, CPT code 29825 is not to be reported when billed along with CPT code 29823. Therefore, reimbursement is \$0.00.

CPT code 29821, was billed at \$1,780.00. This was a complete synovectomy. The recommended reimbursement was \$0.00. The explanation was that according to the Complete Global Service Data for Orthopedic Surgery, 2015, CPT code 29821 is not to be reported when billed along with CPT code 29823. Therefore, reimbursement is \$0.00.

As to CPT code 29826, billed at \$451.13, for a subacromial decompression, the recommendation was for reimbursement as billed.

The total recommended reimbursement was \$2,470.02, against billing in amount of \$6,131.94.

Ms. Brown opines that the Respondent made an overpayment of \$663.50, when it reimbursed the Applicant \$3,141.52.

**Dr. Dowd has filed a rebuttal to the fee audit submitted by the Respondent.**

He says that the Respondent has incorrectly down coded his billing. The claims examiner and/or a certified coder, that is not a surgeon, cannot read his operative report and look at the intraoperative photos and discern the areas of the shoulder that were being operated on. Only a medical professional and moreover a surgeon would be able to understand reports and photos and determine other procedures were being done in various areas of the patient's shoulder. He disagrees with the coder.

In addition, he says that the AMA CPT Assistant is not used by NY State for fee schedule purposes. The AAOC Complete Global Service Data Guide is not used to determine the schedule in NYS No-fault. Only the WCB guide is used.

The patient was positive for labral tear as well as impingement of the right shoulder and a rotator cuff tear. There was synovitis as well as subacromial adhesions. These were the direct result of the 2/7/70 motor vehicle accident.

The MRI as well as his clinical examination showed weakness in multiple tears and an impingement in the shoulder. There was a tearing of the supraspinatus insertion point. Surgically, he found a labral tear and a partial rotator cuff tear. He repaired both as well as performing a synovectomy and a subacromial decompression.

He opines that CPT code 29821 is a separate procedure and should be paid at \$890.00. Separate and distinct procedures are not included as part of the main procedure.

**Addendum to fee audit by Stephanie Brown:**

Ms. Brown has reviewed Dr. Dowd's rebuttal. He says "A claims examiner and or certified coder, that is not a surgeon, cannot read my operative report and look at the intraoperative photos and discern what areas of the shoulder are being operated on. Only a medical professional and moreover a surgeon would be able to understand reports and photos and determined that the procedures are being done in various areas of the patient's shoulder."

Her response is that her coding review was based on the operative report that was submitted. She has personal knowledge of the facts at issue being a Certified Professional Coder, Certified Professional Medical Auditor, and, credentialed with the American Academy of Professional Coders (AAPC). She then lists some of the qualification and says that she is proficient in ICD-9 codes, ICD-10 codes, CPT codes and all facets of billing including services not included in CPT codes such as DME. She is experienced in coding guidelines regarding New York and New Jersey auto and Worker's Compensation claims billing and reimbursements having been made in the fields of medical coding and reimbursement since 2014.

She then notes that Dr. Dowd says that the AMA CPT assistant is not used by New York State for fee schedule purposes. In addition, the AAOS Complete Global Service Data Guide is not used to determine fee schedule in NY No Fault, only the Workmen's Compensation guide is used.

Her response is that the Official New York Worker's Compensation Medical Fee Schedule, promulgated by the chair of the WCB, directs users to "refer to the CPT book for an explanation of coding rules and regulations not listed in the schedule." "The CPT book, in turn, expressly makes references to CPT Assistant, by both statute and regulation."

As to the Complete Global Service Data of Orthopedic Surgery, she says this is a reliable source for correct medical coding from the American Academy of Orthopedic Surgeons. This organization as part of the AMA CPT Advisory Committee named in the AMA CPT manual. She then describes this organization and some of its activities.

"After review of the affidavit from Andrew Dowd, M.D., dated March 1, 2019, my opinion does not change regarding reimbursement methodology utilized for the dates of service and services rendered including in this Medical Coding Review."

She then reiterates that part of her initial report dealing with the CPT codes billed and her opinion as to the correct reimbursement rate.

**At the hearing:**

Applicant argued that the Applicant was not bundling and there were different procedures to different portals, therefore reimbursement should be made as per Surgery Ground Rule #5 at 50%.

Respondent relied upon the fee audit and noted that Dr. Dowd did not calculate how he determined his reimbursement rate.

**FINDINGS:**

The Applicant has established its prima facie case.



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**Dr. Dowd as filed the rebuttal to the fee audit.**

**Stephanie Brown has submitted an addendum to the fee audit.**

After reviewing the documents contained in the file, I find the fee audit of Dr. Dowd more convincing.

**The claim is awarded in the amount of \$890.00.**

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	Total	Status
	Andre w J. Dowd M.D.	10/10/18 - 10/13/18	\$2,717.22	\$890.00	\$ 890.00	Award ed: \$890.00
Total			\$2,717.22		Awarded: \$890.00	

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/31/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

I find that the date for interest to accrue is the date of the filing of the arbitration, 12/31/18 as this is the date when the Applicant's filing was processed and notice of the arbitration sent to the Respondent. As per Insurance Regulation 65-3.9, interest is due until such amount is paid, and without demand therefor.

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's attorney as per 11 NYCRR 65-4.6 (e). However, if the award and interest is equal to, or less than, Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon 11 NYCRR 65-4.6 (b).

- 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 Suffolk

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

10/27/2019  
(Dated)

James Hogan

**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:**  
a8674b255b512668524013b53886a8a6

### **Electronically Signed**

Your name: James Hogan  
Signed on: 10/27/2019