

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Vincentiu Popa, MD
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-18-1104-0728

Applicant's File No. 00027104

Insurer's Claim File No. 32-3450-S60

NAIC No. 25178

ARBITRATION AWARD

I, Antonietta Russo, 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 10/17/2019
Declared closed by the arbitrator on 11/15/2019

Kiyam Paulson from Drachman Katz, LLP participated in person for the Applicant

Alex Garrigan from Bennett, Bricklin, & Saltzburg LLC participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 8,492.37**, 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 is a 58 year male, driver involved in a motor vehicle accident on March 25, 2018. After the accident, the Assignor suffered injuries which resulted in him seeking medical treatment. Subsequently, the Assignor underwent a fluoroscopic guided cervical epidural steroid injection with epidurogram on June 1, 2018. Respondent partially paid the claims and denied the remaining balance on a fee schedule defense. Applicant is seeking reimbursement for the unpaid balance. The only issue presented at the hearing was:

- 1) Whether Respondent properly denied payment based on the fee schedule?

4. Findings, Conclusions, and Basis Therefor

The Applicant and the Respondent submitted documentary evidence in support of their respective positions. All such evidence is contained within the Electronic Case Folder maintained by the American Arbitration Association, as of the date of the hearing. The below noted decision is based upon my review of the submitted evidence, along with the oral argument of the representatives present at the hearing. *During the hearing, Applicant presented arguments to Respondent's fee schedule defense, specifically to CPT code 62321; and at Respondent's request, they were given an opportunity to respond to Applicant's arguments by submitting a post hearing brief and/or reply by November 4, 2019. Applicant was also given an opportunity to reply by November 11, 2019. The undersigned's decision will take into account any post-hearing submissions in the record.*

It is now well settled that 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 [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dep't. 2004). In the case at bar, Applicant has met this burden.

Fee Schedule

An insurance carrier's timely asserted defense that the bills submitted were not properly No-Fault rated or that the fees charged were in excess of the Workers' Compensation fee schedule is sufficient, if proven, to justify a reduction in payment or denial of a claim. See *New York Hosp. Med. Ctr. of Queens v. Country-Wide Ins. Co.*, 295 A.D.2d 583, 586 (2002); *East Coast Acupuncture, P.C. v. New York Cent. Mut. Ins.*, 2008 NY Slip Op 50344(U) (App. Term 2d Dep't., Feb. 21, 2008); *A.B. Med. Servs., PLLC v. American Tr. Ins. Co.*, 15 Misc.3d 132(A), 2007 NY Slip Op 50680(U) (App. Term, 2nd & 11th Jud Dists. 2007); *Rigid Medical of Flatbush, P.C. v. New York Cent. Mut. Fire Ins. Co.*, 11 Misc.3d 139(A), 816 N.Y.S.2d 700, 2006 NY Op 50582 (U) (App. Term 2nd & 11th Jud Dists. 2006); *Ultra Diagnostics Imaging v. Liberty Mut. Ins. Co.*, 9 Misc.3d 97, 98, 804 N.Y.S.2d 532, 2005 N.Y. Slip Op. 25402 (App Term, 2d Dep't.); *Capio Med., P.C. v Progressive Cas. Ins. Co.*, 7 Misc 3d 129[A], 2005 NY Slip Op 50526 (U) (2005); *Triboro Chiropractic & Acupuncture, PLLC v New York Cent. Mut. Fire Ins. Co.*, 6 Misc.3d 132 (A), 2005 NY Slip Op 50110 (U) (App Term, 2nd & 11th Jud Dists 2005).

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).

Applicant submitted claims to Respondent for CPT codes 62321, 72275 and 99213. Based on Respondent's denial and Explanation of Review, Respondent partially reimburse codes 72272 and 99213 and argued the Assignor was a New York resident who had services performed outside of New York state (specifically Northern New Jersey) and cites Law section 5102 which allows professional health services performed outside of New York shall be the lowest of (1) the amount set forth in the New York fee schedule that has the highest applicable fee; (2) the amount charged by the provider; and (3) the "prevailing fee" in the geographic location of the provider. In Respondent's post-hearing submission, Respondent's counsel maintains that CPT code 99213 was reimbursed correctly and based on my review, I concur with Respondent's payment. In terms of CPT code 72275, I find that Respondent underpaid Applicant and therefore, still owes Applicant the sum of \$272.33.

In regards to CPT code 62321, it is Respondent's contention that Applicant is not entitled to any reimbursement for the facility fees for the epidural injections billed pursuant to said code. Respondent maintains the New Jersey Fee Schedule does not list a value for CPT 62321 and the denial states "an invalid code is defined as a procedure or service that has not been adopted by the state."

Applicant references the 2017 update to the Medicare Fee Schedule, in effect when the services were performed and which New Jersey follows, stating in relevant part:

CHANGES TO EPIDURAL STEROID INJECTION (ESI)
CODING Effective January 1, 2017, CPT codes 62310-62319 will be deleted. New codes have been added to reflect the use or non-use of imaging. Please make sure you have updated your systems to reflect the following new ESI codes:

New Codes:

62320- Injection(s), of diagnostic or therapeutic substance(s) (e.g., anesthetic, antispasmodic, opioid, steroid, other solution), not including neurolytic substances, including needle or catheter placement, interlaminar epidural or subarachnoid, cervical or thoracic, WITHOUT IMAGING GUIDANCE (previous code - 62310)

62321- WITH IMAGING GUIDANCE (i.e., fluoroscopy or CT)

As Applicant's attorney pointed out, the State of New Jersey Department of Banking and Insurance in an "Auto Medical Fee Schedule Frequently Asked Questions" sheet ("FAQ") dated November 2015 recognized that, with respect to CPT codes that were changed since the fee schedule rule was adopted and did not have codes on the ASC fee column, "(c)odes can be cross walked when the service described by the new

code is substantially the same as that for the old code and Medicare still permits the service to be performed in an ASC" and paid at the "fees ... for the old codes."

Consequently, I note that Respondent's evidence to support its fee schedule defense consists solely of their denial, explanation of review and post-hearing brief. I find the record is devoid of an audit or analysis by a certified coder. Therefore, having considered the arguments and record, I am persuaded by Applicant's argument for reimbursement of CPT code 62321, and considering that Respondent has failed to submit competent evidentiary proof to support its defense, I find that Respondent's contention that Applicant is not entitled to reimbursement pursuant to CPT Code is not properly sustained.

Accordingly, I find in favor of Applicant and grant their claim in the amount of \$6,641.07.

Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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
	Vincentiu Popa, MD	06/01/18 - 06/01/18	\$181.09	Denied
	Vincentiu Popa, MD	06/01/18 - 06/01/18	\$8,311.28	Awarded: \$6,641.07
Total			\$8,492.37	Awarded: \$6,641.07

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/21/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2) Those fees shall be paid by the insurer. 11 NYCRR §65-4.5(e).

- 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 Nassau

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

02/24/2020

(Dated)

Antonietta Russo

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:
29024e641d5b710f2bbd6e12dc3a2b68

Electronically Signed

Your name: Antonietta Russo
Signed on: 02/24/2020