

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mahmoud Elsayed Dawood Daif PT  
(Applicant)

- and -

State Farm Fire & Casualty Company  
(Respondent)

AAA Case No. 17-18-1108-7332

Applicant's File No. n/a

Insurer's Claim File No. 32-3808-G12

NAIC No. 25178

**ARBITRATION AWARD**

I, Paul Keenan, 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 MB

1. Hearing(s) held on 06/11/2020  
Declared closed by the arbitrator on 06/11/2020

Tiffany Bogasian, Esq. from Law Offices of Zara Javakov, Esq. P.C. participated by telephone for the Applicant

Mitch Feder, Esq. from James F. Butler & Associates participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 308.36**, 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 applicant is entitled to additional payment for activity limitation measurement and training (ALM&T) despite denial based on fee schedule

4. Findings, Conclusions, and Basis Therefor

Submissions are available through ADR filings.

Assignor was allegedly injured in a motor vehicle accident April 16, 2018.

At issue herein is additional payment for Activity Limitation Measurement and Training. Applicant billed \$475.00. Respondent paid \$166.64 and denied additional payment based on fee schedule principles.

An insurer does not establish its prima facie case entitlement to judgment if it fails to provide an expert's affidavit to explain its interpretation of the fee schedule at issue. Gentle Acupuncture, P.C. v. Tri-State Consumer Ins. Co., 55 Misc.3d 147(A), 2017 N.Y.Slip Op. 50706(U) (App. Term 9<sup>th</sup> & 10<sup>th</sup> Dists. May 23, 2017).

An insurer may establish that the fees charged exceeded relevant rates set forth in a fee schedule without an expert affidavit; such calculations can be presented through an affidavit from a claims examiner and by providing relevant excerpts from the Workers' Compensation Medical Fee Schedule. Acupuncture Approach, P.C. v. USAA General Indemnity Co., 59 Misc.3d 1231(A), 2018 N.Y. Slip Op. 50807(U)(Civ. Ct. New York Co., Mary V. Rosado, J., Apr. 24, 2018).

Included in submissions is a coder affidavit attested to by Lori Ercolini, RN, CPC. The CPC wrote, in pertinent part:

In review of the documentation the provider has indicated they came up with \$475 by doing the following:

**...four different codes which isn't appropriate.**

**\*\*Providers letter indicates that one of the CPT codes...is 97800\*\***

**The fee schedule has criteria for 97800...under ground rule #14 in the Physical Medicine section of the fee schedule. One criteria that must be met to use 97800 is that it should not be prescribed prior to three months post injury. The date of loss is 10/7/2016 which makes this less than three months...**

**\*\*97535 is another code they are indicating makes up this service. The CPT code is part of ground rules 8 & 11 which means it would be part of the daily rvu max. The max rvu's would be 8 and reimbursement would be \$67.60 not \$475 being submitted.**

**\*\*97545 is for Work Hardening/conditioning. This would apply if there was lost time from work and then all the criteria in ground rule #13 would apply (see attached)**

**None of the three CPT codes selected would be appropriate since they all have specific criteria that needs to be met in order to bill. In following ground rule #3 for BR codes there is one CPT code with an RUV that would be most appropriate.**

**In reviewing the actual report it was found that the CPT code is similar relative value when following Ground Rule #3 would be 97750. This is a timed code and should be billed 1 unit each 15 minutes of direct care.**

The CPT affidavit describes proper payment as  $RVU\ 5.41 \times conversion\ factor\ 7.70 = \$41.66 \times 4 = \$166.64$ .

Included in submissions is Activity Limitations Measurement and Training Report (signature illegible). This document describes the activity limitation test and valuable purposes of the results. The document states, in pertinent part:

*After extensive review of the Worker's Compensation Fee Schedule, the only proper CPT code to be used to bill for the procedure is 97799. Activity Limitation Measurement and training is a combination of both testing patient's physical abilities and limitations, but it also integrates a training component which provides the patient with necessary tools to deal with the said limitations and prevent aggravation of the injury. There is no code in the fee schedule which would reflect the abovementioned components.*

*To determine the value of "BR" code, one must review the instructions for unlisted codes General Ground Rule 2 and 3, In order to consider a proper amount to be billed, we considered the following codes that do have specific RVU listed in the Fee Schedule. 97750-Physical Performance Testing-each 15 minutes-5.41 97545-Work hardening/conditioning-28.00 97800-Functional capacity evaluation- \$500*

*In comparing the codes, activity limitation measurement and training is most similar to Functional capacity evaluation. However, it may not be billed under 97800 since ALM&T has a wider purpose...FCE only evaluates a patient's limitation as they apply in determination of work limitations and ALM&T also includes evaluation of any restrictions patient may have in day to day activities...*

*In addition to looking at the RVU of similar codes, we also looked at the amounts charged for this procedure by other medical professionals in our geographic area. According to review of recent...awards and NY civil Court decisions, we determined that the overwhelming majority of the providers are charging \$475 for performing ALM &T.*

The CPC affidavit sufficiently discusses each CPT code and the applicable ground rules associated with the services billed. This CPC affidavit is sufficient to support the fee schedule reduction.

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

06/20/2020

(Dated)

Paul Keenan

**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:**  
d99054a52d6e88f567c4e256141b1108

### Electronically Signed

Your name: Paul Keenan  
Signed on: 06/20/2020