

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Alpha Imaging Consultants PLLC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-19-1135-9930

Applicant's File No. CF13006801

Insurer's Claim File No. 32-5881-S84

NAIC No. 25178

ARBITRATION AWARD

I, Lisa Abrams, 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: IP

1. Hearing(s) held on 07/23/2020
Declared closed by the arbitrator on 07/23/2020

TinaMarie Franzoni, Esq. from Choudhry & Franzoni, PLLC participated by telephone for the Applicant

John Rossillo, Esq. from Rossillo & Licata LLP participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, \$ **300.00**, 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

This arbitration arises out of medical treatment for the IP (EP), a 42-year-old female, related to injuries the IP sustained in a motor vehicle accident that occurred on September 21, 2018. Following the accident, the IP sought private medical attention. Applicant seeks reimbursement for diffusion-tensor imaging (DTI) of the brain performed on March 31, 2019. I note that Applicant also billed for an MRI of the brain and a NeuroQuant. Respondent made partial payment for the brain MRI and the NeuroQuant and otherwise denied Applicant's claim for the DTI based upon a fee schedule dispute. The issue in dispute is whether Applicant billed for the DTI within the fee schedule guidelines.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic case file maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Applicant has established its *prima facie* case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue. *See*, Insurance Law § 5106(a); *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D.3d 742, 742-43, 774 N.Y.S.2d 564 (2nd Dept. 2004); *Amaze Med. Supply Inc. v. Eagle Ins. Co.*, 2 Misc. 3d 128(A), 784 N.Y.S.2d 918 (App. Term 2003).

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.*, 13 Misc.3d 172, 822 N.Y.S.2d 378 (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 (Civil Ct, Kings Co. 2006). If Respondent fails to demonstrate by competent evidentiary proof that an Applicant's claims were in excess of the appropriate fee schedules, Respondent'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 (App. Term, 1st Dept., per curiam, 2006). In that regard, an insurer's unilateral decision to re-code or change a medical provider's billed CPT codes, to reimburse disputed medical services at a reduced rate, or to deny a claim in its entirety, is ineffectual when unsupported by a peer review report or by other proof setting forth a sufficiently detailed factual basis and medical rationale for the code changes, fee reductions and denials. *See, Amaze Medical Supply v. Eagle Insurance Company*, 2 Misc. 3d 128A (App Term 2d and 11th Jud Dist. 2003). However, if an insurer presents sufficient evidence to substantiate its reduction of a bill pursuant to the Workers' Compensation Medical Fee Schedule, the burden shifts to the medical provider to rebut the carrier's fee schedule interpretation. *See, Natural Acupuncture Health, P.C. v. Praetorian Ins. Co.*, 30 Misc. 3d 132A (App Term 1st Dept. 2011).

At the hearing, both parties agreed that only CPT code 70551-22 for \$300.00 for a DTI is in dispute.

Respondent submitted an affidavit of Lori Ercolini, a Certified Professional Coder, sworn to on May 5, 2020 in support of its defense. Ms. Ercolini states that "The code 70551-22 is used for Diffusion-Tensor Imaging. The American College of Radiology, January/February 2006 the DTI should not be allowed to be billed separately: therefore,

line 2 for 70551-22 is allowed at zero." She continues on and reasons "With the 3 codes being allowed, Ground Rule 3C would apply from the Radiology section of the NY Workers' Compensation Medical Fee Schedule. This ground rule indicates that when 3 radiology tests are billed, the pricing would be the greatest fee and 75% of all of the lesser." She opines that no payment was due for the DTI because the code 70551 was used for the MRI of the brain on the same day.

Applicant submitted a Memorandum of Law by Tinamarie Franzoni, counsel for Applicant. She asserts that the Respondent incorrectly denied the claim based upon an improper application of the New York State Workers' Compensation fee schedule. The crux of Ms. Franzoni's argument is that a DTI constitutes an additional service to the MRI and, therefore, Applicant can use modifier 22, and may bill an additional amount above the usual amount permitted by the fee schedule.

I find as a matter of fact that the DTI is an additional service over and above a routine brain MRI. In other words, two procedures. I am unpersuaded by Respondent's reasoning and further find, as a matter of fact, that Respondent has not established by a preponderance of credible evidence that the subject service was without any value, nor has it presented any alternative value pursuant to any other interpretation of the applicable fee schedule. Consequently, I find that Applicant is entitled to an additional \$300.00 of reimbursement.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot, without merit, and/or waived insofar as not raised at the time of the hearing.

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 |
|---------|--------------------------------|---------------------|--------------|-------------------|
| | Alpha Imaging Consultants PLLC | 03/31/19 - 03/31/19 | \$300.00 | Awarded: \$300.00 |
| Total | | | \$300.00 | Awarded: \$300.00 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/23/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the initiation date for this case until the date that payment is made at two percent per month, simple interest, on a *pro rata* basis using a thirty-day month.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a minimum of \$60 and a maximum of \$850. *See*, 11 NYCRR 65-4.6 (c) and (e). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b). For cases filed after February 4, 2015, there is no minimum fee and a maximum fee of \$1,360.00.

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

07/31/2020
(Dated)

Lisa Abrams

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:
a6ff6d1bbb0e6635cc14ef899ab46580

Electronically Signed

Your name: Lisa Abrams
Signed on: 07/31/2020