

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Surgicore Of Jersey City, LLC
(Applicant)

- and -

State Farm Fire & Casualty Company
(Respondent)

AAA Case No. 17-19-1127-4186

Applicant's File No. SS-110240

Insurer's Claim File No. 32-4241-B30

NAIC No. 25143

ARBITRATION AWARD

I, Gerry Wendrovsky, 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 07/23/2020
Declared closed by the arbitrator on 07/31/2020

Sabine Sciarrotto from Samandarov & Associates, P.C. participated by telephone for the Applicant

Michael Hanratty from McDonnell Adels & Klestzick, PLLC participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 6,044.84**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended its claim to \$3,286.86, asserting same was in accordance with the relevant fee schedule.

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

3. Summary of Issues in Dispute

The EIP, TC, a 40 year old female, was involved in a motor vehicle accident on 5/24/18. At issue is \$6,044.84 for shoulder surgery (facility fee) performed on 8/8/18. There are two bills. The question presented is the reimbursement due applicant.

4. Findings, Conclusions, and Basis Therefor

This case has been decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I have reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon. This decision is in full disposition of the issues before me.

At the hearing, respondent was provided with the post-hearing opportunity to upload a clear copy of a coder affidavit and supplemental EOB that reflected all payments made; applicant amended its claim to \$3,286.86, asserting same was in accordance with the relevant fee schedule.

An applicant establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D. 3d 742 (2nd Dept.,2004). Applicant has submitted sufficient credible evidence to establish its prima facie case.

Late Submission

Applicant uploaded an EAPG audit two days prior to the hearing.

11 NYCRR 65-4.5(o)(3)(ii), provides:

"[c]opies of all documents to be submitted to the arbitrator shall be simultaneously transmitted to the other parties at least seven calendar days prior to the hearing. The arbitrator shall determine if all parties received such documents prior to the commencement of the hearing".

It is within an arbitrator's discretion in accepting or rejecting late submissions, and concomitantly, entertaining or declining to entertain same. 11 NYCRR 65-4.2 [b][3][ii]; *Matter of Mercury Cas. Co. v Healthmakers Med. Group, P.C.*, 67 A.D. 3d 1017 (2nd Dept.,2009).

Accordingly, having considered the equities, in my discretion, I have elected to accept this late submission, as it concerns the sole issue presented.

Fee Schedule

Applicant billed a total of \$13,040.02 under cpt 29806 (\$5,677.77), cpt 29823-59 (\$1,472.45), cpt 29825-59 (\$1,472.45), cpt 29819-59 (\$1,472.45), cpt 29999-59 (\$1,472.45), and cpt 29999-59 (\$1,472.45) [Bill One]; respondent paid \$7,648.55.

Applicant billed a total of \$1,171.26 under cpt 64415 (\$829.30) and cpt 29823-59 (\$341.96) [Bill Two].

I have taken judicial notice of the New Jersey and New York Workers' Compensation fee schedule. Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D. 3d 13, 20 (2nd Dept.,2009).

Respondent had the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. Robert Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co., 13 Misc. 3d 172 (Civ. Ct. 2006). In the absence of such proof, respondent's defense cannot be sustained. Continental Medical, P.C. v. Travelers Indem. Co., 11 Misc. 3d 145(A)(App Term 2006).

Respondent Coder

Respondent uploaded an affidavit dated 6/20/19 of a certified professional coder (CPC), Beth Seidman, averring in pertinent part:

".... In accordance with the 33rd Amendment to regulation 83 The fee schedule that will be used Will be The Official New York State Workers Compensation, EAPG Fee Schedule. Enhanced Ambulatory Patient Group (EAPG).

(Bill One)

BILLED CPT CODE	AMOUNT BILLED	CPT CODE DEFINITION ASC FILE# N-40692-SFM	CORRECT APG ASSIGNMENT	CORRECT REIMBURSEMENT
29806	\$5677.77	Arthroscopy, shoulder, surgical; l; capsulorrhaphy	APG 38	\$5596.40
29823 59	\$1472.45	Arthroscopy, shoulder, surgical; debridement, extensive	APG 37	\$0.00
29825 59	\$1472.45	Arthroscopy, shoulder, surgical; c apsulorrhaphy	APG 37	\$0.00
29819 59	\$1472.45	Arthroscopy, shoulder, surgical l ; with rotator cuff repair	APG 37	\$0.00
29999 59	\$1472.45	Unlisted procedure, arthroscopy	APG 37	\$0.00

29999 59	\$1472.45	Unlisted procedure, arthroscopy	APG 37	\$0.00
Total	\$13040.02		Total with Capitol Add-on \$81.30	<u>\$5677.77</u>

Total Billed Amount \$13,040.02. Total Amount Allowed \$5,677.77 State Farm Paid \$7,648.55, overpaying the provider \$1,970.78.

(Bill Two)

BILLED CPT CODE	AMOUNT BILLED	CPT CODE DEFINITION	CORRECT APG ASSIGNMENT	CORRECT REIMBURSEMENT
64415	\$829.30	Injection, anesthetic agent; brachial plexus, single	APG 214	\$0.00
76942 59	\$341.96	Ultrasonic guidance for needle placement (eg, biopsy, aspiration, injection, localization device) imaging supervision and interpretation	APG 472	\$0.00

Billed Amount \$1,171.26. Allowed Amount \$0.00 State Farm Paid \$517.89, overpaying the provider \$517.89.

Total Billed Amount \$14,211.28. Total Amount Allowed \$5,677.77. State Farm Paid \$8,166.44 overpaying the provider \$2,488.67.

CPT Code: 29806 LT is the Significant Procedures Performed

As of October 1, 2015, the NY WCB implemented the Enhanced Ambulatory Patient Group (EAPG) for the Ambulatory Fee Schedule.... The provider submitted the charges using CPT Codes. A "crosswalk" was made to determine the appropriate EAPG code.... The findings in my report support APG 38 for the significant procedures performed, reimbursable in the amount of \$5,596.40 before Capitol Add-on.

CPT code's 29823, 29825, 29819 and (298226) 29999 are considered consolidated as per EAPG Guidelines "Significant Procedure Consolidation", therefore Reimbursement is \$0.00

CPT Code 29999(unlisted Procedure) As per operative note 08/08/2018, Lysis of thickened subacromial compartment and Lysis (decompression -destruction) of thickened coracoacromial , has been coded in error. The correct CPT code is 29826 (Arthroscopy, shoulder, surgical; decompression of subacromial space with partial acromioplasty, with coracoacromial ligament (ie, arch) release, when performed (List separately in addition to code for primary procedure).

CPT code's 29826is considered consolidated as per EAPG Guidelines "Significant Procedure Consolidation"

Modifier 59 has been appended in error to CPT codes 29823, 29825, 29819 and 29999. As per CPT, modifier 59 is to be appended to a CPT code when a distinct procedural service is performed. As per CPT guidelines on the use of modifier 59, documentation must support a different session, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury not ordinarily encountered or performed on the same day by the same individual....

EAPG CPT Cross Walk was used to establish APG Code 38 with a "APG Weight" of 18.9106 X "APG Base Rate" 295.94 =5,596.40 "Rate before Add-On". Based on the NCCI Policy Manual for Medicare Services, CPT code 64415 may never be billed together with CPT code 29806 under any circumstances....

APG 38 = 5596.40 + Capitol Add-On 81.37 = \$5,677.77...."

Applicant EAPG Audit

Applicant uploaded a 3M Health Information Systems printout, dated 7/21/20, setting forth the Code, Final EAPG, Full Weight, Adjusted Weight, Vist Full EAPG Weight, Vist Adjusted EAPG Weight, Payment %, Paid Units, Pay Action, EAPG Payment, Existing Payment, Blended Payment, Add-on Payment and Total Payment (**\$13,381.98**) (allowing all codes with the exception of 64415).

Post Hearing Submission

Respondent uploaded several charts summarizing the payments made, essentially asserting there was a substantial overpayment made to applicant; it reflected payments of \$7,648.55 and \$3,483.69 on 12/17/18 and 3/12/19, respectively [Bill One]; and a payment of \$517.89 on 12/17/18 [Bill Two], for a **combined total payment to applicant of \$11,650.13**. I note that in addition to payments for cpt 29806 (\$6,714.89), there was a payment of \$1,472.45 each for cpt 29823, 29825 and 29819.

Discussion

At the hearing, applicant argued that respondent's CPC affidavit was deficient, specifically asserting that modifier 59 was properly used for 8 'separate' procedures, involving 2 incisions; respondent argued there was no professional opinion uploaded by applicant specific to the instant matter, and that the CPC reviewed the operative report.

Upon review, as I find respondent's CPC affidavit to be essentially coherent and sufficient to sustain respondent's fee schedule defense [Robert Physical Therapy, P.C., supra], the burden shifted to applicant to submit proof that the charges involved a different interpretation of the applicable fee schedule or of an inadvertent miscalculation or error. Cornell Medical, P.C. v. Mercury Cas. Co., 24 Misc. 3d 58 (App Term 2009).

I do not find that applicant has provided sufficient proof to refute the CPC affidavit. While on their face, the entries in applicant's 3M printout would ordinarily present a confident picture of EAPG billing, did not address the CPC's key arguments- namely, the limitation of the use of modifier 59 and the consolidation of APG group codes.

Applicant's claim is denied.

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

08/01/2020
(Dated)

Gerry Wendrovsky

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:
4c72710aa499b42d4c035639d045ad6a

Electronically Signed

Your name: Gerry Wendrovsky
Signed on: 08/01/2020