

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

American Ambulatory Surgery Center DBA
Surgery Center of Oradell
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No.	17-19-1149-3615
Applicant's File No.	BT19-104898
Insurer's Claim File No.	18-1076434
NAIC No.	24260

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (JG)

1. Hearing(s) held on 11/19/2020
Declared closed by the arbitrator on 11/19/2020

Jason Behar, Esq. from The Tadchiev Law Firm, P.C. participated by telephone for the Applicant

Jay Komar, Esq. from McCormack, Mattei & Holler participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 6,052.48**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel amended the amount at issue to \$2,944.90, based on a prior partial payment.

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

3. Summary of Issues in Dispute

EIP, JG, is a 48-year-old male, who was involved in a motor vehicle accident on December 15, 2018. Following the accident, EIP sought medical treatment. A right knee arthroscopy is performed on June 19, 2019. Applicant's claim for reimbursement was partially paid by Respondent, and the balance denied based on the fee schedule.

The issue presented: Whether Respondent's fee schedule defense is sustainable?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

EIP, JG, is a 48-year-old male, who was involved in a motor vehicle accident on December 15, 2018. Following the accident, EIP sought medical treatment. A right knee arthroscopy is performed on June 19, 2019. Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained, and 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. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find Applicant establishes a prima facie case. The burden then shifts to the Respondent to prove that the bill in question was properly denied.

Applicant's claim for reimbursement was partially paid by Respondent, and the balance denied based on the fee schedule.

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 claim. New York Hosp. Med. Ctr. Of Queens v. Country-Wide Insurance Company, 295 A.D.2d 583, 744

N.Y.S.2d 201 (2d Dept. 2002); East Coast Acupuncture, P.C. v. New York Central Mutual Insurance, 18 Misc.3d 139(A), 2008 N.Y. Slip Op. 50344(U) (App. Term 2d and 11th Jud. Dists. 2008); A.B. Medical Services, PLLC v. American Transit Insurance Company, 15 Misc.3d 132(A), 2007 N.Y. Slip Op. 50680(U) (App. Term 2d and 11th Jud. Dists. 2007). The insurer has the burden of coming forward with "competent evidentiary proof" to support its fee schedule reduction or denial. See, e.g., Roberts Physical Therapy, P.C. v. State Farm Mutual Automobile Insurance Company, 13 Misc.3d 172, 3006 N.Y. Slip Op. 26240 (N.Y. Civ. Ct. Kings Co. 2006). In the absence of such proof, a defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Company, 11 Misc.3d 145(A), 2006 N.Y. Slip Op. 50841(U) (App. Term 1st Dept. 2006).

In support of its defense, Respondent has submitted an affidavit from Darlene L. Buttner, CPC, dated 1/23/20. Ms. Buttner performed an analysis of the fee schedule of New Jersey and concludes that the total allowable fee, based on the New Jersey Fee Schedule/Regulation, would be \$7,023.96. Respondent also submits a printout from 3M Health Information Systems to support its partial payment to Applicant of \$3,026.24 pursuant to the fee schedule in New York. It is noted that Respondent's affidavit is devoid of an analysis of the New York Fee Schedule, and does not critique Applicant's submission of the APG Payment Methodology in support of its reimbursement claim.

In rebuttal, Applicant submits a printout from 3M Health Information Systems with Grouping Information containing multiple significant procedures, and the APG Payment Methodology. Applicant's 3M Health Information Systems printout establishes total reimbursement of \$5,971.14, for the services provided. To explain the Ambulatory Surgery Fee Schedule, Applicant submits the Enhanced Ambulatory Patient Groups Implementation Guide. Applicant also relies on the Multiple Significant Procedure Discounting as explained by 3M.

After a careful review of the evidence, and the arguments presented by the parties' representatives at the hearing, I find that I am persuaded by Applicant submission regarding the reimbursement claim for the services provided on date of service 6/19/19. In comparing the submissions by the respective parties, I find that I am more persuaded by the documentary evidence of Applicant to establish its reimbursement claim.

Accordingly, based on the foregoing, Applicant is awarded the amended amount of \$2,944.90.

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	Amount Amended	Status
	American Ambulatory Surgery Center DBA Surgery Center of Oradell	06/19/19 - 06/19/19	\$6,052.48	\$2,944.90	Awarded: \$2,944.90
Total			\$6,052.48		Awarded: \$2,944.90

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/02/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay to Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

For cases filed on or after February 4, 2015, the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon, subject to no minimum fee, and a maximum fee of \$1,360.00. 11 NYCRR 65-4.6(d).

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

12/01/2020
(Dated)

Nicholas Tafuri

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:
3461f8c5f2569f2b75ddf18e21cdca80

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 12/01/2020