

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Circular Symmetry Acupuncture PC (Applicant)	AAA Case No.	17-19-1127-1322
- and -	Applicant's File No.	AF19?104336
	Insurer's Claim File No.	2018628138-0180074410
New York Central Mutual Fire Insurance Company (Respondent)	NAIC No.	14834

### **ARBITRATION AWARD**

I, Mary Anne Theiss, 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: Claimant

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

Vijay Gupta, Esq. from Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone LLP participated by telephone for the Applicant

Kristine O'Shea, Esq. from Gullo & Associates, LLP participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,928.33**, 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 the Carrier paid the appropriate amount for cupping and acupuncture care. The amount in question is \$1,928.33 amended to \$1195.74.
4. Findings, Conclusions, and Basis Therefor

The Claimant was in an automobile accident on October 13, 2018 and came under the care of Circular Symmetry Acupuncture, PC where acupuncture treatments and cupping was performed.

The Applicant billed 97799 for cupping and the Carrier disallowed all cupping procedures stating it is included in the acupuncture bill.

In this matter, the Applicant billed \$45.99 which is a By Report code code 97799. This was listed for cupping therapy. I have found in previous decisions that that code 97016 (application of a modality to one or more areas: vasopneumatic devices), possesses the unit value most consistent in relativity to the unit value recognized in the documentation for cupping services. Additional support for the application of CPT Code 97016 the AMA CPT Assistant 1995 states the following "97016 vasopneumatic devices: These devices incorporate a suction type force to the soft tissue being used." CPT code 97016 the relative value unit is 3.3, suction-type force to the soft tissue being used." CPT code 97016 the relative value unit is 3.3, the conversion factor is \$5.78 for a total charge of \$19.07.

I find that \$19.07 is owed on each cupping procedures.

The acupuncture was billed at the MD rate and performed by an acupuncturist. An insurer need not establish that fee reductions for acupuncture services made in accordance with the Workers' Compensation fee schedule for acupuncture services performed by chiropractors was proper as it has been held "as a matter of law, that an insurer may use the workers' compensation fee schedule for acupuncture services performed by chiropractors to determine the amount which a licensed acupuncturist is entitled to receive for such acupuncture services." GBI Acupuncture, P.C. v. State Farm Mutual Automobile Ins. Co., 58 Misc.3d 137(A), 2017 N.Y. Slip Op. 51832(U) (App. Term 2d, 11th & 13th Dists. Dec. 19, 2017), citing Great Wall Acupuncture, P.C. v. Geico Ins. Co., 26 Misc.3d 23, 24 (App. Term 2d, 11th & 13th Dists. 2009). I find the acupuncture was paid accurately.

I am aware of and considered the Carrier's Joyce Warner affidavit and the Applicant's Um affidavit and arguments.

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
	<b>Circular Symmetry Acupuncture PC</b>	11/06/18 - 11/06/18	\$147.67	<b>Awarded: \$38.14</b>
	<b>Circular Symmetry Acupuncture PC</b>	11/27/18 - 11/27/18	\$147.67	<b>Awarded: \$38.14</b>
	<b>Circular Symmetry Acupuncture PC</b>	12/11/18 - 12/18/18	\$223.66	<b>Awarded: \$57.21</b>
	<b>Circular Symmetry Acupuncture PC</b>	12/19/18 - 12/19/18	\$147.67	<b>Awarded: \$38.14</b>

	<b>Circular Symmetry Acupuncture PC</b>	<b>01/03/19 - 01/08/19</b>	<b>\$151.98</b>	<b>Awarded: \$38.14</b>
	<b>Circular Symmetry Acupuncture PC</b>	<b>01/04/19 - 01/04/19</b>	<b>\$75.99</b>	<b>Awarded: \$19.07</b>
	<b>Circular Symmetry Acupuncture PC</b>	<b>01/10/19 - 01/15/19</b>	<b>\$295.34</b>	<b>Awarded: \$76.28</b>
	<b>Circular Symmetry Acupuncture PC</b>	<b>01/16/19 - 01/23/19</b>	<b>\$295.34</b>	<b>Awarded: \$76.28</b>
	<b>Circular Symmetry Acupuncture PC</b>	<b>01/22/19 - 01/29/19</b>	<b>\$295.34</b>	<b>Awarded: \$76.28</b>
	<b>Circular Symmetry Acupuncture PC</b>	<b>01/31/19 - 01/31/19</b>	<b>\$147.67</b>	<b>Awarded: \$38.14</b>
<b>Total</b>			<b>\$1,928.33</b>	<b>Awarded: \$495.82</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 05/02/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall compute and pay the applicant the amount of interest from the filing date of the request for arbitration, at a rate of two percent (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). The filing date, pursuant to the American Arbitration Association records, is as noted above interest is paid from the date of filing.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d). As this matter was filed February 4, after 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee in accordance with 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 Madison

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

12/04/2020  
(Dated)

Mary Anne Theiss

**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:**  
7c2849486f2fca143aa71dfa05e5f324

**Electronically Signed**

Your name: Mary Anne Theiss  
Signed on: 12/04/2020