

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Island Medical Diagnostics PLLC
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-19-1132-0618

Applicant's File No. 19-003192

Insurer's Claim File No. 77480-02

NAIC No. 24309

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 (BT)

1. Hearing(s) held on 03/05/2021
Declared closed by the arbitrator on 03/05/2021

Robert Bott, Esq. from The Licatesi Law Group, LLP participated for the Applicant

Andrew Schiavone, Esq. from Law Offices of Rubin & Nazarian participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 767.84**, 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

EIP, BT, is a 36-year-old male, who was the driver of a motor vehicle involved in an accident on August 12, 2018. Following the accident, EIP sought medical treatment. Health services are provided by Applicant on date of service: February 4, 2019.

Applicant's reimbursement claims were partially paid, and the balances denied, based on the fee schedule.

The issue in dispute is whether Respondent's fee schedule defenses are 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, BT, is a 36-year-old male, who was the driver of a motor vehicle involved in an accident on August 12, 2018. Following the accident, EIP sought medical treatment. Health services are provided by Applicant on date of service: February 4, 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 its prima facie case of entitlement to No-Fault compensation for its claims. The burden then shifts to the Respondent to prove that the bills in question were properly denied.

Applicant's reimbursement claims were partially paid, and the balances 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).

I am permitted to take judicial notice of the Worker's Compensation fee schedule. Kingsbrook Jewish Medical Center v. Allstate Insurance Company, 61 AD 3d 13 (2d Dept. 2009); LVOV Acupuncture PC v. Geico Insurance Company, 32 Misc. 3d 144 (A) (App. Term 2d, 11th and 13th Jud. Dists. 2011). Natural Acupuncture Health PC v. Praetorian Insurance Company, 30 Misc. 3d 132 (A), 2011 NY Slip Op 50040 (U), (App. Term 1st Dept. 2011).

For date of service 2/4/19, Applicant's reimbursement claim for range of motion measurements (95851) and manual muscle testing (95831) in the amount of \$985.00, was partially paid (in the amount of \$217.16), and the remainder denied (\$767.84), based on the fee schedule.

For CPT code 95851 (ROM), based on the plain reading of the fee schedule, it is clear that you can only bill for each extremity or each trunk section (spine). As Applicant performed the testing on two (2) different areas, the cervical and lumbar spine, it is entitled to two (2) units of ROM at \$45.71 each (RVU 5.41 x \$8.45 conversion = \$45.71). As the total amount of 91.42 was reimbursed by Respondent for code 95851, no further payment is owed.

For CPT code 95831 (MMT), based on the plain reading of the fee schedule, you can only bill per extremity or the trunk. As Applicant performed the testing on each extremity, it is entitled to four (4) units of MMT at \$43.60 (RVU 5.16 x \$8.45 conversion = \$43.60), for a total of \$174.40. As Applicant was previously paid \$125.74, I find that pursuant to

the applicable fee schedule, additional reimbursement is owed for code 95831, in the total amount of \$48.66.

Accordingly, based all of the foregoing, Applicant is awarded the total sum of \$48.66.

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	Status
	Island Medical Diagnostics PLLC	02/04/19 - 02/04/19	\$767.84	Awarded: \$48.66
Total			\$767.84	Awarded: \$48.66

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/13/2019 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.

03/09/2021
(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:
3f0af0c5eb8be3fc6575d4b950c60c6

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 03/09/2021