

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Surgicore Surgical Center LLC  
(Applicant)

- and -

Preferred Mutual Insurance Company  
(Respondent)

AAA Case No. 17-20-1176-0424

Applicant's File No. 240690

Insurer's Claim File No. 16122428

NAIC No. 15024

**ARBITRATION AWARD**

I, Kent Benziger, 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: V.W.

1. Hearing(s) held on 04/12/2021  
Declared closed by the arbitrator on 04/12/2021

Kurt Lundgren from Thwaites, Lundgren & D'Arcy Esqs participated by telephone for the Applicant

Cynthia Thomsen from Preferred Mutual Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 976.38**, 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

On December 20, 2016, the Assignor/Eligible Injured Party, a 60-year-old female, was, by history, involved in a motor vehicle accident. On April 13, 2019, Dr. Izeogu performed an epidural steroid injection and epidurogram and lumbar disc herniation/radiculopathy. The Applicant, Surgicore Surgical Center, LLC, an ambulatory surgical center, submitted a bill for its ambulatory surgical facility fee for the procedure. The bill was on a UB-04 CMS 1450 form. The form listed an injection spine L/S 62323 billed at 976.38. The Carrier denied the claim on September 6, 2019 on the basis that CPT 62323 is noted listed in the 2012 New York State Workers' Compensation Fee Schedule and stated it was not payable. The Applicant contends that it was not seeking reimbursement for a service performed by the physician pursuant to

the New York State Workers Compensation Fee Schedule, but for the ambulatory surgical facility fee which is calculated pursuant to enhanced ambulatory patient groups (EAPG) methodology using the 3M software program. Applicant contends this request for EAPG reimbursement was clearly noted through the UB-04 and through the exchanged 3M Health Information Systems Print-Out which documented the proper calculation of the ambulatory surgical fee.

This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

#### 4. Findings, Conclusions, and Basis Therefor

On December 20, 2016, the Assignor/Eligible Injured Party, a 60-year-old female, was, by history, involved in a motor vehicle accident. Neither party has submitted extensive treatment records except for the dates in dispute.

On April 13, 2019, Dr. Izeogu performed an epidural steroid injection and epidurogram and lumbar disc herniation/radiculopathy. The Applicant, Surgicore Surgical Center, LLC, an ambulatory surgical center, submitted its bill for reimbursement for the ambulatory surgical facility fee for the procedure. The bill was on a UB-04 CMS 1450 form. The form listed an injection spine L/S 62323 billed at 976.38.

Denial. The Respondent received the claim on May 28, 2019. The Carrier requested verification which it noted as received on September 4, 2019. Through that verification request the Respondent did the reference to CPT 62323. After a response from the Applicant, the Carrier denied the claim on September 6, 2019 on the basis that CPT 62323 is noted listed in the 2012 New York State Workers' Compensation Fee Schedule and stated it was not payable.

Contentions. As noted above the Respondent contends that the specific code listed on OB-04 is not specifically listed in the Workers' Compensation Code. However, the Applicant contends that this service was performed in New Jersey, and the Applicant, Surgicore Surgical Center, LLC, is not seeking reimbursement for the specific surgical procedure, but for the ambulatory surgical facility fee pursuant to the enhanced ambulatory patient groups (EAPG) methodology using the 3M software program

Analysis. Pursuant to the Fourth Amendment effective April 1, 2013 to 11 NYCRR 65-3.8(g)(1), the Applicant's fees cannot exceed the charges permitted pursuant to the Insurance Law 5108. If there is a dispute that requires an application or interpretation of the proper fee schedule, the Respondent has the burden to come forward with competent evidentiary proof to support its defenses. *Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co.*, 13 Misc.3d 172 (Civil Ct, Kings Co. 2006). A lay person is not qualified to evaluate the CPT codes or to change if the code is used by a health provider in its bills. See *Abraham v. Country-Wide Ins. Co.*, 3 Misc. 3d. 130A (App. Term 2d. Dept. 2004).

The Respondent failed to compute the proper ambulatory surgical facility fee for this procedure being performed in New Jersey. The Carrier claims the specific service performed is not listed under the New York Workers Compensation Fee Schedule.

Applicant contends it is disingenuous that the Carrier did not raise this specific issue as to an improper code through its verification request.

More importantly, the actual submitted claim form (UB-04) clearly noted that it was seeking reimbursement for the ambulatory surgical fee through the Value Codes Amount under Box 39, Box 39 of the form clearly lists ambulatory Surgery Base Rate Visit Code 1408 which also lists the proper base rate for computing EAPG. This information is determined through the Official New York State Workers' Compensation Board Ambulatory Surgery Fee Schedule which also involve addressing proper calculations and different CPT codes for ambulatory services performed in New Jersey for New York residents.

(<http://www.wcb.ny.gov/content/main/hcpp/MedFeeSchedules/implementation-guide-ambulatory-surgery-fee-schedule>)

As of October 1, 2015, payment for ambulatory surgical services is to be made in accordance with enhanced ambulatory patient groups (EAPG) methodology, 12 NYCRR 329-2.1. An APG is "a defined group of outpatient procedures, encounters or ancillary services, as specifically identified and published by the Department of Health, which reflect similar patient characteristics and resource utilization and which incorporate the use of ICD-10-CM diagnosis codes and CPT-4 and HCPCS procedure codes..." 12 NYCRR 329-2.2(a). The appropriate fee is determined by "APG computer software developed and published by Minnesota Mining and Manufacturing Corporation (3M) to process CPT-4 and ICD-10 code information in order to assign patient visits to the appropriate APG category or categories and apply appropriate bundling, packaging and discounting to assign the appropriate final APG weight and associated reimbursement" 12 NYCRR 329-2.1(h).

The Applicant has submitted a 3M Health Information Systems Print-Out which lists the following:

Procedures 62323 Njx Interlaminar Imbr/sac  
Rev Code: 490  
Place of Service:  
Units: 1  
Date: 4/13/2019  
Procedure EAPG: 53 SPINE INJECTIONS AND OTHER  
RELATED PROCEDURES  
Final EAPG: 53 SPINE INJECTIONS AND OTHER RELATED  
PROCEDURES  
Final EAPG Type: 2 Significant Procedure  
Final EAPG Category: 3 Musculoskeletal system procedures  
Discounting Flag: Multiple Procedure Discounting candidate  
Service Line Indicator: 38 Orthopedics

The 3M Print-Out then listed calculations with total payment of \$976.38. This payment was noted pursuant to EAPG and contained the calculations pursuant to categories that included Code, Final EAPG, Full Weight, Adjusted Weight, Full EAPG Weight, Adjusted EAPG Weight, Pay Action, EAPG Payment, Blended Payment, Add-on and Total Payment.

As a finding of fact, the Applicant's proof is more persuasive especially as a proper reading of the UB-04 Claim Form indicates that the New Jersey based Applicant is seeking reimbursement for the ambulatory surgical fee -not the actual reimbursement for the actual service. In addition, the Applicant has submitted its calculations with the 3M software. The Carrier has failed to submit a peer review or an affidavit from a certified coder establishing that it properly reimbursed the services. *Custis v. Travelers Property Casualty Ins. Co.*, 27 Misc.3d 928, 899 N.Y.S.2d 578 (Dist. Ct. Suffolk Co. 2010).

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

Interest. The insurer shall compute and pay to the 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).

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first

party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

**APPLICANT IS AWARDED REIMBURSEMENT OF \$976.38, TOGETHER WITH INTEREST AND ATTORNEYS' FEES.**

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>Surgicore Surgical Center LLC</b>	<b>04/13/19 - 04/13/19</b>	<b>\$976.38</b>	<b>Awarded: \$976.38</b>
	<b>Surgicore Surgical Center LLC</b>	<b>06/08/19 - 06/08/19</b>	<b>\$0.00</b>	<b>Awarded: \$0.00</b>
<b>Total</b>			<b>\$976.38</b>	<b>Awarded: \$976.38</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/19/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest. The insurer shall compute and pay to the 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

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

- 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 Orange

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

04/17/2021  
(Dated)

Kent Benziger

**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:**  
eed1a98821bd20acd43d858a39a771ac

### **Electronically Signed**

Your name: Kent Benziger  
Signed on: 04/17/2021