

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Wei Dao Acupuncture PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-19-1144-0138
Applicant's File No.	n/a
Insurer's Claim File No.	0494808590101019
NAIC No.	35882

ARBITRATION AWARD

I, Deepak Sohi, 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 07/08/2021
Declared closed by the arbitrator on 07/08/2021

Joseph Armao from The Law Offices of Hillary Blumenthal P.C. (Melville) participated in person for the Applicant

Kathleen Coggins from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, \$ 4,299.72, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended to \$2,462.82 to reflect payment pursuant to the New York State Workers' Compensation Board Chiropractic Fee Schedule. This balance reflects office visits as well as moxibustion and cupping therapy that were denied reimbursement by the Respondent.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills. The parties also stipulated that Respondent's NF-10 denial of claim forms were timely issued.

3. Summary of Issues in Dispute

This arbitration arises out of acupuncture treatment including office visit and moxibustion and cupping therapy provided to the EIP, a 37-year-old male, who was involved in a motor vehicle accident as a driver on 12/5/2015. Applicant is seeking reimbursement for the initial and four (4) follow-up office visits, as well as the moxibustion and cupping therapy provided to the EIP on dates of service 12/8/2015 through 4/28/2016. Respondent denied reimbursement for the initial and follow-up office visits as well as the moxibustion and cupping therapy based on the New York State Workers' Compensation Board Chiropractic Fee Schedule.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

FEE SCHEDULE

ACU TX - INITIAL & FOLLOW-UP OFFICE VISITS

DATES OF SERVICE 12/8/2015 - 4/13/2016

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 a claim. See New York Hosp. Med. Ctr.

of Queens v. Country-Wide Ins. Co., 295 A.D.2d 583, 586 (2002); East Coast Acupuncture, P.C. v. New York Cent. Mut. Ins., 2008 NY Slip Op 50344(U) (App. Term 2d Dep't., Feb. 21, 2008); A.B. Med. Servs., PLLC v. American Tr. Ins. Co., 15 Misc.3d 132(A), 2007 NY Slip Op 50680(U) (App. Term, 2nd & 11th Jud Dists. 2007); Rigid Medical of Flatbush, P.C. v. New York Cent. Mut. Fire Ins. Co., 11 Misc.3d 139(A), 816 N.Y.S.2d 700, 2006 NY Op 50582 (U) (App. Term 2nd & 11th Jud Dists. 2006); Ultra Diagnostics Imaging v. Liberty Mut. Ins. Co., 9 Misc.3d 97, 98, 804 N.Y.S.2d 532, 2005 N.Y. Slip Op. 25402 (App Term, 2d Dep't.); Capio Med., P.C. v Progressive Cas. Ins. Co., 7 Misc 3d 129[A], 2005 NY Slip Op 50526 (U) (2005); Triboro Chiropractic & Acupuncture, PLLC v New York Cent. Mut. Fire Ins. Co., 6 Misc.3d 132 (A), 2005 NY Slip Op 50110 (U) (App Term, 2nd & 11th Jud Dists 2005).

For date of service, 12/8/2015, the Applicant billed for an initial office visit utilizing CPT code 99203. This CPT code was denied in its entirety by the Respondent. For dates of service 1/5/2016, 2/8/2016, 3/7/2016, and 4/13/2016, the Applicant billed for follow-up office visits utilizing CPT code 99202. These CPT codes were denied in their entirety by the Respondent. In its denials, as to CPT codes 99203 and 99202, the Respondent stated, "There is no allowance for this procedure in the New York State Worker's Compensation Fee Schedule under the provider's specialty."

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See, Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). See also, Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (Civil Ct, Kings Co. 2006). If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims were in excess of the appropriate fee schedules, defendant's defense of noncompliance with the appropriate fee schedules cannot be sustained. See, Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't., per curiam, 2006).

Generally, an insurer's unilateral decision to re-code or change a medical provider's billed CPT codes, to reimburse disputed medical services at a reduced rate, or to deny a claim in its entirety, is ineffectual when unsupported by a peer review report or by other proof setting forth a sufficiently detailed factual basis and medical rationale for the code changes, fee reductions and denials. See Amaze Medical Supply v. Eagle Insurance Company, 2 Misc. 3d 128A (App Term 2d & 11th Jud. Dist. 2003).

I find that when the calculation of the proper fee for a particular service or procedure is clearly set forth in the schedule, an interpretation of the schedule by a qualified professional is not required. At the hearing, it was determined that Respondent properly reimbursed most of the Applicant's claims pursuant to the New York State Workers' Compensation Board Chiropractic Fee Schedule.

Respondent has not submitted any proof to substantiate its fee schedule defense with regard to the initial evaluation (CPT code 99203) and the follow-up evaluations (CPT code 99202). Therefore, I find that the Respondents' fee schedule defense fails.

In this case, the proper calculation for CPT code 99203 is $RVU\ 9.47 \times RCF\ 5.78 = \54.74 . This is the amount the Applicant billed for CPT code 99203. I find that the Respondent must reimburse the Applicant \$54.74 for the initial evaluation provided for on date of service 12/8/2015. The proper calculation for CPT code 99202 is $RVU\ 7.27 \times RCF\ 5.78 = \42.02 . This is the amount the Applicant billed for CPT code 99202. I find that the Respondent must reimburse the Applicant \$42.02 for each of the follow-up evaluations provided for on dates of service 1/5/2016, 2/8/2016, 3/7/2016, and 4/13/2016.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of the Applicant. Consequently, the Applicant's claims are granted in the amount of \$222.82 for the initial and follow-up office visits provided for on dates of service 12/8/2015, 1/5/2016, 2/8/2016, 3/7/2016, and 4/13/2016.

FEE SCHEDULE

ACU TX - MOXIBUSTION & CUPPING THERAPY

DATES OF SERVICE 12/8/2015 - 4/28/2016

Part of the amended amount in dispute (\$2,240.00) in this matter represents what was billed by the Applicant (\$35.00/unit) for eight (8) units of cupping therapy and fifty-six (56) units of moxibustion therapy. Respondent denied the cupping and moxibustion therapy based on the New York State Workers' Compensation Board Chiropractic Fee Schedule. In its denials, the Respondent stated, "There is no allowance for this procedure in the New York State Worker's Compensation Fee Schedule under the provider's specialty."

Respondent has not submitted any proof to substantiate its fee schedule defense with regard to the cupping therapy (CPT code 97039) and the moxibustion therapy (CPT code 97799). Consequently, I find in favor of the Applicant for its use of CPT codes 97039 and 97799 for the cupping and moxibustion therapy billed herein.

Respondent argues that if it is to reimburse the Applicant for the cupping and moxibustion therapy provided for herein, it should do so pursuant to an affidavit by Dr. Steven Schram, DC, LAc which the Respondent has submitted in this case. Dr. Schram, a chiropractor and licensed acupuncturist, described the goals of acupuncture treatment and discussed what is involved in the administration of cupping and moxibustion therapy. Dr. Schram then discusses billing for cupping and moxibustion therapy which do not have an explicit CPT codes assigned to them and that the CPT Assistant supports utilizing CPT code 97039 but that some practitioners utilize CPT code 97799. Dr. Schram goes on to state that CPT codes 97039 and 97799 are both "by-report" codes used by acupuncturists and that neither has a relative value (RV) listed in the WCFS for chiropractors or medical doctors. Dr. Schram then sets forth what is required when billing for a "by-report" item which would include the nature, extent and need for the procedure, as well as the time, skill and equipment necessarily involved in said procedure. In addition, the WCFS General Ground Rules state that the provider shall establish a RVU consistent in relativity with other RVU's

in the schedule. Dr. Schram acknowledged that these types of treatment are associated with concurrent acupuncture treatment, no other additional diagnostic or examination components are required.

As to the billing for the cupping therapy itself, Dr. Schram described how he arrived at the proper RVU, which in his professional opinion would be 2.40 for cupping therapy. He opined that, based on what cupping therapy entails, the RVU for cupping therapy should be between an unattended hot pack (2.37) and attended ultrasound (2.41). To that point, Dr. Schram claims that there is little overhead associated with cupping therapy and it requires very little in the way of supplies other than a lubricant on the skin surface to maintain a tight seal. Thus, according to Dr. Schram, the proper calculation for cupping therapy performed in Region IV is to utilize an RVU of 2.40 for cupping therapy then multiply it by the regional conversion factor (RCF) for Region IV, to yield a reimbursement amount of \$13.87 per unit of cupping therapy ($2.40 \times 5.78 = \$13.87$). I find that the Respondent has sufficiently established, based on the affidavit of Dr. Schram, that the cupping therapy provided by the Applicant should be properly reimbursed at the rate of \$13.87 per unit billed.

As to the billing for the moxibustion therapy itself, Dr. Schram described how he arrived at the proper RVU, which in his professional opinion would be 2.41 for moxibustion therapy. He opined that, based on what moxibustion therapy entails, the RVU for moxibustion therapy should be that of an attended ultrasound (2.41). To that point, Dr. Schram claims that moxibustion is a simple non-technical procedure and that it is an attended procedure that is very similar to ultrasound in terms of skill. Supply costs are minimal and are included in the cost of the procedure (much the same as with acupuncture needles which are included in the cost of acupuncture). Thus, according to Dr. Schram, the proper calculation for moxibustion therapy performed in Region IV is to utilize an RVU of 2.41 for moxibustion therapy then multiply it by the regional conversion factor (RCF) for Region IV, to yield a reimbursement amount of \$13.93 per unit of moxibustion therapy ($2.41 \times 5.78 = \$13.93$). I find that the Respondent has sufficiently established, based on the affidavit of Dr. Schram, that the moxibustion therapy provided by the Applicant should be properly reimbursed at the rate of \$13.93 per unit billed.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find that the Applicant has failed to rebut the opinion of Dr. Schram and that the cupping therapy is properly reimbursed at \$13.87 per unit and the moxibustion therapy is properly reimbursed at \$13.93 per unit. Consequently, the Applicant's claims are granted in the amount of \$891.04 for the cupping and moxibustion therapy provided for on dates of service 12/8/2015 through 4/28/2016.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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
	Wei Dao Acupunctu	02/04/16 -	\$294.26	\$182.02	Awarded:

	re PC	02/10/16			\$97.74
	Wei Dao Acupunctu re PC	04/08/16 - 04/28/16	\$673.22	\$392.02	Awarded: \$181.32
	Wei Dao Acupunctu re PC	03/10/16 - 04/07/16	\$633.40	\$350.00	Awarded: \$139.06
	Wei Dao Acupunctu re PC	02/11/16 - 03/07/16	\$800.14	\$462.02	Awarded: \$209.06
	Wei Dao Acupunctu re PC	12/08/15 - 12/30/15	\$840.00	\$474.74	Awarded: \$221.78
	Wei Dao Acupunctu re PC	01/05/16 - 02/03/16	\$1,058.70	\$602.02	Awarded: \$264.90
Total			\$4,299.72		Awarded: \$1,113.86

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/09/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the filing date for this case until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d), subject to a maximum fee of \$1,360.00.

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

07/10/2021
(Dated)

Deepak Sohi

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:
46238f9f01e3366be6e8de4656666514

Electronically Signed

Your name: Deepak Sohi
Signed on: 07/10/2021