

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Welco Pharmacy Inc.
(Applicant)

- and -

Country-Wide Insurance Company
(Respondent)

AAA Case No. 17-21-1193-4377

Applicant's File No. A28589

Insurer's Claim File No. 000352286 001

NAIC No. 10839

ARBITRATION AWARD

I, Mitchell Kleinman, 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 07/29/2021
Declared closed by the arbitrator on 07/29/2021

Amisha Dukarm, Esq. from Munawar & Hashmat LLP participated in person for the Applicant

Martina Vilton, Esq. from Jaffe & Velazquez, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,179.02**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the disputed amount to \$1896.34 to reflect payments received and the proper fee schedule amount for the pharmaceuticals as per the NY Workers' Compensation Fee Schedule ("fee schedule").

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

The parties stipulated to the timely service of the bill by the Applicant and that the Respondent timely denied the charges based upon failure to comply with the fee schedule.

3. Summary of Issues in Dispute

This arbitration arises out of an October 31, 2020 motor vehicle accident in which the claimant, T.M., a then 20-year-old male, was injured in an accident as the driver of the insured vehicle. The claimant reported injuries to his shoulder and neck, which resulted in his seeking treatment. In dispute is Applicant's claim for pharmaceutical products in the amended amount of \$1896.34 provided to the claimant on November 11, 2020. Respondent timely denied the claim based upon the amount billed not complying with the fee schedule. The issue at this hearing is whether Respondent's fee schedule can be sustained.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the electronic file for both parties and make my decision in reliance thereon.

Applicant established a prima facie case of entitlement to reimbursement of its claim, by submitting evidence that the prescribed statutory billing forms were mailed and received by the insurer and payment of No-Fault benefits was overdue. See, *Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, NY Slip Op 04787 (2015). The burden then shifted to the insurer to come forward with admissible evidence demonstrating the existence of a material issue of fact. *Amaze Medical Supply Inc. v. Allstate Insurance Co.* 3 Misc.3d 43, 779 N.Y.S.2d 715 (N.Y. App. Term 2004). The Respondent timely denied the claims based on failure to comply with the fee schedule pursuant to the stipulation of the parties and the record.

Fee Schedule

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 an Applicant's claims were in excess of the appropriate fee schedules, Respondent'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).

The Respondent has denied the pharmaceutical services provided by the Applicant based upon failure to comply with the fee schedule. Respondent relies upon the submitted explanation of benefits ("EOBs") that each contain a paragraph regarding this service

and provides a reason for the reduction. No sufficient evidence was submitted regarding who authored this paragraph, their qualifications, nor is the analysis sufficient to support the changing of the code. The EOB provides a reason for the reduction based upon "the maximum reimbursement for generic drugs or medicines" but does not properly support this contention. The Respondent has not submitted sufficient evidence to support their fee schedule defense and has not met their burden. It is noted that the Applicant did submit an affidavit that, even if the Respondent's evidence met their burden, is more persuasive than the Respondent's submission. Therefore, I find for the Applicant. 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
	Welco Pharmacy Inc.	11/11/20 - 11/11/20	\$2,179.02	\$1,896.34	Awarded: \$1,896.34
Total			\$2,179.02		Awarded: \$1,896.34

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/08/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

- C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850." Id. The minimum attorney fee that shall be awarded is \$60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6(i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360." 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, Mitchell Kleinman, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

08/22/2021
(Dated)

Mitchell Kleinman

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:
7566fa0417d064707975a3c5a0f1d676

Electronically Signed

Your name: Mitchell Kleinman
Signed on: 08/22/2021