

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dr. Keith Savitzky, D.C.
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-21-1194-8455

Applicant's File No. none

Insurer's Claim File No. 32-05M3-14Q

NAIC No. 25143

ARBITRATION AWARD

I, Jeffrey Silber, 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 08/12/2021
Declared closed by the arbitrator on 08/12/2021

Andrew Saraga, Esq. from Law Office of Anna Goldman P.C. participated in person for the Applicant

Jared Fitzpatrick, Esq. from James F. Butler & Associates participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 738.93**, 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 Applicant is entitled to any additional reimbursement for the ultrasound procedure?

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the ADR Center 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 ADR Center for both parties and make my decision in reliance thereon.

The EIP, JZ, a 68-year-old male was injured in a motor vehicle accident on September 22, 2020. The EIP sought medical treatment for his injuries sustained in the accident. Applicant billed for ultrasound guidance of the full spine on 6/10/20. Respondent partially reimbursed the Applicant for the service citing as its defense a fee schedule defense. Applicant is now seeking the balance of the claim.

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 that Applicant established a prima facie case.

Respondent argued that it was entitled to reduce reimbursement on each partially reimbursed day based on the fact that the maximum reimbursement of 8.0 units had been achieved either through payment to Applicant or another provider. See Ground Rule 8 and 11 in Physical Therapy Section.

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).

Applicant billed using CPT code 76999 which is an "Unlisted Ultrasound Procedure Full Spine". Respondent paid \$110.70 and denied the remainder stating "910 - The procedure (code) and/or supplies billed does not correlate to the listed traumatic diagnosis on the submitted bill. Please review this bill for possible errors or omissions of ICD diagnosis code(s) or inappropriate usage of the CPT/HCPCS code. Please submit additional documentation substantiating necessity and relating the service to the motor vehicle accident. SF019 - This base fee was calculated according to the New York Workers' Compensation Board Schedule of Medical Fees and/or Regulation 68, Appendix 17-C. SF625 - Per New York Workers' Compensation fee schedule General Rule #3 titled "Procedures Without Specified Unit Values", for any procedure where the unit value is listed in the schedule as "BR", the physician shall establish a unit value consistent in relativity with other unit values shown in the schedule.

Respondent submitted an Affidavit by Dr. Antoinette Perrie, DC, LAc, CPC. She opined " When billing for a scan of the entire spine, the CPT code of 76800 can and should be used for comparison. The definition of this code is Ultrasound, spinal canal and contents. In lay terms, as per the AAPC, the provider uses sound waves to capture images of the entire spinal canal including the spinal cord, vertebrae, and intervertebral discs. See attached documentation from the AMA. This procedure, which in fact is more involved than a simple musculoskeletal scan, has an RV of 5.56. This service is found in the medical fee schedule. Payment for the entire spine is generous indeed, since the study did not include the thoracic area, another 12 vertebrae. To arrive to the correct reimbursement for the technical component the RV for this procedure 5.56 is multiplied by the conversion factor of \$36.20 which equals \$201.27. According to the fee schedule, the technical component pays 55% of this value, which equals \$110.70. The carrier paid \$110.70 plus interest to the provider." She adds "Separate consideration is usually given to each sacroiliac joint. In this case, Dr. Savitzky, who is the billing technician, provides a service that was never requested. The referral is quite clear regarding exactly what the treating provider desired. Dr. Savitzky took it upon himself to scan areas that were not requested. There would be no reimbursement, therefore."

Applicant provided an affidavit from Ilona Roberman. I have reviewed the affidavit and am not persuaded that the Applicant billed appropriately in this matter.

Any additional reimbursement is denied.

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 claim is DENIED in its entirety

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

08/25/2021

(Dated)

Jeffrey Silber

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:
2e0348c4e244b15dbf4638652ad1f8b5

Electronically Signed

Your name: Jeffrey Silber
Signed on: 08/25/2021