

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Comprehensive Laboratory LLC
d/b/a TopLab
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No.	17-19-1151-4360
Applicant's File No.	00052665
Insurer's Claim File No.	32-8645-R98
NAIC No.	25178

ARBITRATION AWARD

I, Rhonda Barry, 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 09/09/2021
Declared closed by the arbitrator on 09/09/2021

Justin Rosenbaum, Esq. from Drachman Katz, LLP participated in person for the Applicant

Jonathan DePasquale, Esq. from James F. Butler & Associates participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,578.41**, 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

The EIP, "ESPP" is a 30 year old male injured in a motor vehicle accident on 4/29/19. Applicant seeks \$2578.41 for urine drug screening on DOS 8/21/19. Upon receipt of applicant's claim, respondent recalculated the amount due, made partial payment and denied the balance based upon the NYS Workers Compensation Fee Schedule. Respondent submits a fee schedule analysis from Ariana Valez, CPC. Respondent also submits a cashed check for \$200.15 evidencing payment at the fee schedule rate determined by Ms. Valez in her analysis. The check is dated 3/8/21.

4. Findings, Conclusions, and Basis Therefor

I have completely reviewed all timely submitted documents contained in the ADR Center record maintained by the American Arbitration Association and considered all oral arguments. No additional documents were submitted by either party at hearing. No witnesses testified at hearing.

ANALYSIS

Applicant has established its prima facie entitlement to reimbursement for no fault benefits based upon the submission of a properly completed claim form setting forth the amount of the loss sustained, and that payment is overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD3d 742, (2nd Dept. 2004). Westchester Medical Center v. Lincoln General Ins. Co., 60 AD3d 1045 (2nd Dept. 2009).

As of 1/23/18, 11 NYCRR 68.6 has been amended to permit an insurer to reimburse applicant the lower amount of the fee schedule if the injured party is a resident of New York state.

Specifically, 11 NYCRR 68.6 (b) provides that except as provided in subdivision(a) of this section (emergency care), if a professional health service reimbursable under Insurance Law §5102 (a) (1) is performed outside the state with respect to an eligible injured person that is a resident of the state, the amount that the insurer shall reimburse for the service shall be the lowest of:

(1) the amount of the fee set forth in the region of the state that has the highest applicable amount in the fee schedule for that service.

(2) the amount charged by the provider and

(3) the prevailing fee in the geographic location of the provider.

The insurer has the burden of proving that the fees charged were excessive and not in accordance with the Worker's Compensation fee schedule. St. Vincent Medical Care PC v. Countrywide Insurance Company, 26 Misc. 3d 146 (A), 907 NYS 2d 441 (App. Term 2d, 11th and 13th Dists. 2010). If the insurer fails to demonstrate, by competent evidentiary proof, that the claims were excess of the appropriate fee schedule, the defense of noncompliance cannot be sustained. See, Continental Medical PC v Travelers Indemnity Company, 11 Misc.3d 145(a), 819 NYS 2d 847 (App Term 1st Dept. 2006).

I am permitted to take judicial notice of the NY Workers Compensation and New Jersey fee schedules. 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 N Y slip op 50040 (U), (App. Term 1st Dept. 2011).

Applicant billed 9 units of CPT 80101 (\$194.04) and 68 units of CPT 80102 (\$2492.88).

Relying on a fee schedule analysis from Ms. Valez, Respondent opines that CPT 80101 and 80 one 02 are not included in the New Jersey fee schedule. Therefore, 80101 is cross walked to CPT 80104. CPT 80104 is eligible when multiple drug classes tested in an office, laboratory or facility setting. Use of the code requires a test kit and may only be billed once for all drug classes determine with a single test kit on a single specimen. "For qualitative analysis by multiplex screening kit for multiple drugs or drug classes, use 80104". Therefore, for 9 units of CPT 80104 in accordance with the New Jersey fee schedule applicant is entitled to \$194.04. For CPT 80102 Ms. Valez allowed 1 unit. CPT 80102 is for drug confirmation, each procedure. According to applicant's report, there was a positive finding only for one drug tested (THC). Under the New Jersey fee schedule applicant is entitled to \$230.70.

In accordance with the New York State Worker's Compensation Fee Schedule Ms. Valez opines that 80104 is eligible when multiple drug classes tested in office, laboratory a facility setting. For qualitative analysis by multiplex screening kit for multiple drugs or drug classes, use 80104. However, only one unit of CPT 80104 is reported. Therefore, applicant is entitled to one unit of CPT 80104 (29.57 RVUs x \$1.19 conversion factor) equals \$35.19. According to Ms. Velez applicant is entitled to four units of CPT 80 one 02, \$146.64. Eight one 002 is included in eight one 003 for which applicant is entitled to \$6.59. Applicant is also entitled to \$11.73 for CPT 82570. Total: \$200.15.

Applicant did not submit a fee coder affidavit to refute Ms. Valez's arguments. Rather, applicant submitted various arbitration awards questioning the sufficiency of the affidavits of certified professional coder's that disagreed with its billing. This is insufficient.

Respondent properly reimbursed applicant \$200.15 on 3/8/21. Therefore, applicant is awarded interest from 12/10/19 - 3/8/21. Applicant is also awarded attorney and filing 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 interest only

A. Attorney's Fees

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

As this matter was filed **after** February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4.6(d) (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d).

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

09/14/2021
(Dated)

Rhonda Barry

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:
9c3fe3c8465a6a3ec47b174ddcd4bf31

Electronically Signed

Your name: Rhonda Barry
Signed on: 09/14/2021