

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dimitri Bazin
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-20-1159-5343

Applicant's File No. 61382

Insurer's Claim File No. 041205657

NAIC No. 36447

ARBITRATION AWARD

I, Steven Celauro, 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: FMNo a

1. Hearing(s) held on 08/31/2021
Declared closed by the arbitrator on 08/31/2021

No Appearance from Law Offices of Zara Javakov, Esq. P.C. failed to appear for the Applicant

Charles Schreier from LM General Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,123.69**, 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

This arbitration arises out of medical treatment for the EIP (FM), a 18-year-old female related to injuries sustained in a motor vehicle accident that occurred on 10/19/19. Applicant seeks reimbursement for an office visit and Dry Needling performed on 1/27/20. Respondent timely partially denied reimbursement based on the fee schedule.

4. Findings, Conclusions, and Basis Therefor

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]).

The Applicant billed \$975.00 for dry needling, pursuant to CPT 20999 and \$148.69 for an office visit, pursuant to CPT 99215. The Respondent issued partial reimbursement in the amount of \$249.96, asserting that the Applicant had billed in excess of the fee schedule. The Applicant seeks the balance.

Respondent has the burden of coming forward with "competent evidentiary proof" supporting its fee schedule defenses. See, *Continental Med., P.C. v. Travelers Indem. Co.*, 11 Misc.3d 145a (2006).

An insurer fails to establish the existence of an issue of fact with respect to a defense that fees charged were excessive and not in accordance with the Workers' Compensation fee schedule in the absence of proof establishing the defense. *St. Vincent Medical Care, P.C. v. Country Wide Ins. Co.*, 26 Misc.3d 146(A), 907 N.Y.S.2d 441 (Table), 2010 N.Y. Slip Op.50488(U), 2010 WL 1063914 (App. Term 2d, 11th & 13th Dists. Mar. 19, 2010). 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 submitted the letter of Beth Palisin, RN, BSN, CPC, in support of its defense. Ms. Palisin evaluated the services performed, the CPT codes and the fee schedule. She notes that the Applicant had billed a "by report" code for dry needling, and since there is no evidence of pricing to a similar service code, assigned an RVU of .52, which is equal to that of a comparable code, 20553. As Code 20553 reflects injections to single or multiple trigger points to three or muscles, it is to be reimbursed one time, regardless of the number of injections or muscles injected. Based on the foregoing, Ms. Palisin concludes that the Applicant is entitled to reimbursement in the amount of \$148.69 for CPT 99215 and \$119.10 for one unit of CPT 20999, for a total of \$267.79. As the Applicant has already been reimbursed \$249.96, Ms. Palisin contends that the Applicant is entitled to an additional \$17.83.

The Applicant has submitted the affidavit of Jules Parisien, M.D. Dr. Parisi avers that there is no CPT code dedicated to dry needling and that CPT 20552 and 20553 (both for trigger point injections) would not be appropriate. While dry needling may sound like it is an injection, the technique is different from a trigger point injection. The doctor contends that CPT 20999 was properly billed and that various criteria should be considered to determine the proper fee, in accordance with Surgical Ground Rule 10. He discusses dry needling in detail and concludes that the services were billed in accordance with the fee schedule.

After consideration of the documents submitted in evidence, the arguments made by the parties and taking judicial notice of the fee schedule, I find that the Respondent has established its fee schedule defense. I am persuaded more by the analysis of Ms. Palisin than by the analysis of Dr. Parisien. Ms. Palisin set forth a credible, detailed and persuasive analysis of the fee schedule and its applicability in this case. While Ms. Palisin refers to a CPT code that is most similar to the procedure performed, Dr. Parisien does not reference an RVU which is consistent with other RVUs shown in the fee schedule. Based on Ms. Palisin's reasoning and the submitted evidence, I find that the Applicant is entitled to reimbursement in the amount of \$17.83.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

The Applicant and the Respondent have submitted documentary evidence in support of their respective positions. All such evidence is contained within MODRIA maintained by the American Arbitration Association, as of the date of the hearing. The above noted decision is based upon my review of the submitted evidence, along with the oral argument of the representatives present at the hearing; only the arguments offered at the hearing are preserved in this decision. Any arguments not presented at the hearing are considered waived.

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

	Dimitri Bazin	01/27/20 - 01/27/20	\$148.69	Denied
	Dimitri Bazin	01/27/20 - 01/27/20	\$975.00	Awarded: \$17.83
Total			\$1,123.69	Awarded: \$17.83

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/13/2020 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 the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a minimum of \$60 and a maximum of \$850. See, 11 NYCRR 65-4.6 (c) and (e). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6 (b). For cases filed after February 4, 2015, there is no minimum fee and a maximum fee of \$1360.00.

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

09/28/2021
(Dated)

Steven Celauro

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:
5f871566809a2641b072cc99075d4daf

Electronically Signed

Your name: Steven Celauro
Signed on: 09/28/2021