

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Health Harmony Acupuncture PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-20-1156-6587
Applicant's File No. ZJ161661301
Insurer's Claim File No. 0553364130101034
NAIC No. 35882

ARBITRATION AWARD

I, Nancy Kramer Avalone, 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: Assignor MA

1. Hearing(s) held on 09/22/2021
Declared closed by the arbitrator on 09/22/2021

Yasmeeen Gumbs, Esq. from Law Offices of Zara Javakov, Esq. P.C. participated for the Applicant

Ahmad Abdelaziz, Esq. from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 5,120.75**, 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

Applicant seeks reimbursement for acupuncture treatment and cupping therapy provided to Assignor MA from 06/24/19 through 10/30/19, following the motor vehicle accident of 02/24/19. Respondent partially paid the Applicant for the services, based on the applicable fee schedule. Respondent denied the remaining dates of service based upon the Independent Medical Examinations ("IME") by John C. Yang, L.Ac. and Milton P. Groelinger, DC. Based upon the exam report(s) all future acupuncture No-fault benefits were terminated on 08/10/19. Applicant submitted a rebuttal report to the IME by Joseph Stephan, DC. Respondent submitted an addendum report by Dr. Groelinger.

Assignor MA was a 30-year old male involved in a motor vehicle accident on 02/24/19, as a front-seated passenger.

The issues presented are whether the Applicant was properly reimbursed for the acupuncture treatment and cupping therapy provided to the Assignor prior to the termination of benefits, and whether Respondent has established that the treatment following the termination of benefits was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This matter was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association (MODRIA), and the oral arguments of the parties' representatives. The hearing was held via a web-based video conferencing tool (ZOOM), due to the COVID-19 (SARS-CoV-2) pandemic. I have reviewed the documents contained in the E-file, heard the arguments of the parties, and make my decision in reliance thereon.

The Applicant establishes its prima facie entitlement to reimbursement by proof that it submitted its claim, setting forth the fact and amounts of the losses sustained, and that payment of no-fault benefits was overdue. Insurance Law § 5106(a); (*Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742 [2nd Dept. 2004]).

Once the claimant has established a prima facie case, the burden shifts to the defendant to come forward with admissible evidence refuting the claimant's evidence and demonstrating the existence of a material issue of fact. (*King's Medical Supply v. Country-Wide Ins.*, 5 Misc.3d 767, 770 [2004]).

Fee Schedule Issue:

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, (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 (App. Term, 1st Dept, *per curiam*, 2006).

Once the insurer makes a prima facie showing that the amounts charged by a provider were in excess of the fee schedule, the burden shifts to the provider to show that the charges involved a different interpretation of such schedule or an inadvertent miscalculation or error. *Cornell Medical PC v. Mercury Casualty Co.*, 24 Misc. 3d 58, 884 N.Y.S. 2d 558 (App. Term 2d, 11th and 13th Dists. 2009).

The undersigned arbitrator is permitted to take judicial notice of the Worker's Compensation fee schedule. *See, Kingsbrook Jewish Medical Center the Allstate Ins. Co.*, 871 N.Y.S.2d 680, 61 A.D. 3d 13 (App. Div. 2d Dept. 2009); *Matter of Medical Society v. Serio*, 100 N.Y.2d 854, 768 N.Y.S.2d 423 (2003)

Pre-IME: Dates of service 07/24/2019 through 08/05/2019.

Respondent did not provide a legal defense for the nonpayment of the initial evaluation on 06/24/19. ***Therefore, Applicant is awarded the balance of \$54.74.***

With respect to the acupuncture treatment, the documentation shows that for each date of service, the acupuncture treatment consisted of the initial insertion of the needles and then two more insertions, for a total of \$55.66. Respondent was reimbursed for two codes, leaving a balance of \$17.57 per date of treatment. There were five dates of treatment prior to the termination of benefits. ***Therefore, Applicant is awarded the balance of \$87.85 (5 x 17.57 = 87.85).***

With respect to the cupping therapy, Applicant billed the fee of \$90.00 consisting of two cupping sessions at \$45.00 each. There is no mention of cupping therapy nor is there a CPT code ascribed to cupping in the fee schedule. Thus, Applicant used a "by report" code. Workers' Compensation Fee Schedule sets forth reporting requirements for services billed with "by report" CPT codes. Among the requirements is that "the nature, extent, and need for the procedure or service, the time, the skill, and equipment necessary, etc., is to be furnished." Also, the health service provider must establish a unit value consistent in relativity with other unit values in the fee schedule.

Respondent reimbursed the amount of \$13.87 per cupping session, thus the sum of \$27.74 per date of service, based upon the affidavit of Steven L. Schram, D.C., L.Ac. Dr. Schram's coder affidavit gave a detailed explanation for his arrival at the valuation of 2.41 RVU.

I find Dr. Schram's affidavit to be credible and therefore, accept Respondent's payment of \$13.87 per cupping session as proper reimbursement. *See Cornell Medical PC v. Mercury Casualty Co.*, 24 Misc. 3d 58, 884 N.Y.S. 2d 558 (App. Term 2d, 11th and 13th Dists. 2009).

Post-IME: Dates of service 08/12/2019 through 10/24/2019.

To support the lack of medical necessity, the Respondent submitted the IME reports of Acupuncturist Yang and Groelinger, DC. The Traditional Chinese Medicine examination and a western exam were performed by Acupuncturist Yang on 07/29/19. Per Acupuncturist Yang, the Assignor indicated he was working full time without any limitations at the time of the exam. The results of the IME were normal. Mr. Yang concluded there was no Qi stagnation or stagnation of blood. He concluded there was no need for further acupuncture treatment or cupping therapy.

In opposition, the Applicant relied on the rebuttal report by Joseph Stephan, DC. Per Dr. Stephan, On 8/15/2019, the patient presented for an acupuncture re-evaluation with complaints of thoracic pain and lumbar pain, rated at 8/10. Acupuncture examination revealed red colored tongue with dry coating as well as superficial depth of pulse. Diagnosis was cervicgia, pain in thoracic spine and low back pain. The patient was recommended to continue acupuncture treatment. The goal of acupuncture treatment was to reduce pain as well as to increase blood flow and circulation. He states that he disagreed with the IME examiner's assessments.

In the addendum report by Dr. Groelinger, he deferred his opinion to an individual licensed in acupuncture.

Based upon the positive findings at the contemporaneous acupuncture exam of 08/15/19 that contradict those of Acupuncturist Yang, I find that the Applicant has established the medical necessity for further treatment. At the hearing on the matter, the parties discussed the balance of the claim based on the same rate of pre-IME reimbursement, and the outstanding amount post-IME was determined as set forth below. Thus, the amounts below are awarded to Applicant. *This award is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.*

Applicant is entitled to statutory interest, attorney fees and the filing fee, as set forth in Sections 6.A, B, C and D, below.

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.

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Medical		From/To	Claim Amount	Status
	Health Harmony Acupuncture PC	08/15/19 - 08/15/19	\$26.41	Awarded: \$26.41
	Health Harmony Acupuncture PC	07/17/19 - 07/25/19	\$180.00	Awarded: \$55.22
	Health Harmony Acupuncture PC	07/29/19 - 08/20/19	\$720.00	Awarded: \$221.92
	Health Harmony Acupuncture PC	07/25/19 - 08/20/19	\$500.94	Awarded: \$500.94
	Health Harmony Acupuncture PC	08/26/19 - 09/17/19	\$720.00	Awarded: \$445.28
	Health Harmony Acupuncture PC	08/26/19 - 09/17/19	\$445.28	Awarded: \$221.92
	Health Harmony Acupuncture PC	09/24/19 - 09/24/19	\$26.41	Awarded: \$26.41
	Health Harmony Acupuncture PC	09/18/19 - 09/24/19	\$225.00	Awarded: \$83.22
	Health Harmony Acupuncture PC	09/18/19 - 10/15/19	\$556.60	Awarded: \$556.60

	Health Harmony Acupuncture PC	09/26/19 - 10/15/19	\$585.00	Awarded: \$450.08
	Health Harmony Acupuncture PC	10/17/19 - 10/24/19	\$450.00	Awarded: \$180.31
	Health Harmony Acupuncture PC	10/17/19 - 10/23/19	\$222.64	Awarded: \$222.64
	Health Harmony Acupuncture PC	10/30/19 - 10/30/19	\$26.41	Awarded: \$24.61
	Health Harmony Acupuncture PC	10/28/19 - 10/30/19	\$180.00	Awarded: \$55.22
	Health Harmony Acupuncture PC	10/28/19 - 10/30/19	\$111.32	Awarded: \$111.32
	Health Harmony Acupuncture PC	06/24/19 - 06/24/19	\$54.74	Awarded: \$54.74
	Health Harmony Acupuncture PC	06/24/19 - 06/24/19	\$90.00	Awarded: \$27.74
Total			\$5,120.75	Awarded: \$3,264.58

B. The insurer shall also compute and pay the applicant interest set forth below. 02/12/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the **date noted above** 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

Respondent shall pay the Applicant attorney's fees in accordance with 11 NYCRR §65-4.6(d). As this matter was filed **after 02/04/2015**, this case is subject to the provisions promulgated by the Dept. of Financial Services in the Sixth Amendment to 11 NYCRR §65-4 (Ins. Reg. 68-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, Nancy Kramer Avalone, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/29/2021
(Dated)

Nancy Kramer Avalone

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:
604d6470cc689f17b0df70920162b5a0

Electronically Signed

Your name: Nancy Kramer Avalone
Signed on: 09/29/2021