

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Aharon Gutterman MD, PLLC
(Applicant)

- and -

Country-Wide Insurance Company
(Respondent)

AAA Case No. 17-20-1163-1496

Applicant's File No. NA

Insurer's Claim File No. 348807001

NAIC No. 10839

ARBITRATION AWARD

I, Preeti Priya, 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 [EO]

1. Hearing(s) held on 09/29/2021
Declared closed by the arbitrator on 09/29/2021

Walter Pisary, Esq., from The Law Offices of Hillary Blumenthal P.C. (Melville)
participated for the Applicant

Wyllyne C. Michel, Esq., from Jaffe & Velazquez, LLP participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 500.24**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel amended the amount in dispute to \$421.88 to reflect Applicant's interpretation of the New York Workers' Compensation Chiropractic fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Applicant's counsel amended the amount in dispute to \$421.88 to reflect Applicant's interpretation of the New York Workers' Compensation Chiropractic fee schedule.

4. Findings, Conclusions, and Basis Therefor

The dispute arises from the underlying automobile accident of January 4, 2020, in which the Assignor, a 32 year old male, was a driver. The issues in this matter are: Whether Applicant established entitlement to No-Fault compensation for fees associated with electrodiagnostic tests provided to Assignor;

Whether Respondent established that Applicant billed in excess of the New York Workers' Compensation Chiropractic fee schedule.

Applicant was represented by Walter Pisary, Esq., who presented oral arguments and relied upon documentary submission at the hearing. Wyllyne C. Michel, Esq., representing Respondent, presented oral arguments and relied upon documentary submissions. I have reviewed the submissions contained in the American Arbitration Association's ADR Center. These submissions are the record in this case.

The record indicates that, Assignor was evaluated at RO Medical Care, PC, on January 8, 2020. Assignor received conservative care including physical therapy. On February 4, 2020. On February 4, 2020, after an initial neurodiagnostic evaluation, EMG/NCV tests of the lower extremities was performed. Applicant submitted the claims for the EMG/NCV tests to Respondent. Respondent partially paid the claims and denied the remainder.

After reviewing the records, I find that Applicant established its prima facie case of entitlement to No-Fault compensation. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

The rates charged by Applicant must be in accordance with Insurance Law § 5108. The services in dispute were performed subsequent to the effective date, April 1, 2013, of the Fourth Amendment to Regulation 68-C. Sub division (g) (1) of No-Fault Regulation 65-3 now states that proof of fact that the amount of loss sustained pursuant to Insurance Law section 5106(a) shall not be deemed supplied by an applicant to an insurer and no payment shall be due for claimed medical services under any circumstances: (i) when the claimed medical services were not provided to an injured party; or (ii) for those claimed medical services that exceed the charges permissible pursuant to Insurance Law sections 5108(a) and (b) and the regulations promulgated thereunder for services rendered by medical providers.

I take judicial notice of the New York Workers' Compensation fee schedule. See Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D.3d 13, 20 (2d Dept. 2009); LVOV Acupuncture, P.C. v. Geico Ins. Co., 32 Misc.3d 144(A), 2011 NY Slip Op 51721(U) (App Term 2d, 11th & 13th Jud Dists. 2011); Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 NY Slip Op 50040(U) (App Term, 1st Dept. 2011).

Effective April 1, 2013 11 NYCRR 65-3(g)(1) had been amended and the no-fault regulations now read, "proof of fact and amount of loss sustained pursuant to insurance law §5106 (A) shall not be deemed supplied by an applicant to an insurer and no payment shall be due for such claimed medical services under any circumstances:

(i) when the claim medical services were not provided to an injured party; or

(ii) for those claim medical service fees that exceed the charges permissible pursuant to insurance law §5108 (A) and (B) in the regulations promulgated there under the services rendered by medical providers. (2) This subdivision shall apply to medical services rendered on or after April 1, 2013.

The dates of service fall within the amended regulations.

Respondent paid \$3,545.32 and denied the remainder; Applicant is seeking \$421.88. Respondent's Explanation of Benefits states "11 The CPT/HCPCS code(s) reported by the provider are included in another procedure reported on the bill. X21 In accordance to New York No-Fault Law, Regulation 68, this base fee was calculated according to the New York Workers' Compensation Board Schedule of Fees, pursuant to Regulation 83 and/or Appendix 17-C of 11 NYCRR...."

Respondent has not met its burden to come forward with competent evidentiary proof to support its fee schedule defense. See Robert Physical Therapy, P.C. v. State Farm Mut. Ins. Co., 13 Misc 3d 172 (Civ.Ct. Kings Co.2006).

Respondent did not submit any evidence establishing its Fee Schedule reductions. I award Applicant's amended claim.

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
	Aharon Gutterman MD, PLLC	02/04/20 - 02/04/20	\$500.24	\$421.88	Awarded: \$421.88
Total			\$500.24		Awarded: \$421.88

B. The insurer shall also compute and pay the applicant interest set forth below. 04/22/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant's award shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30-day month from the date payment became overdue to the date of the payment of the award pursuant to 11 NYCRR 65-3.9 (a). The end date for the calculation of the period of interest shall be the date of payment of the claim. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.")

C. Attorney's Fees

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

Respondent shall pay Applicant a separate attorney's fee, in accordance with 11 NYCRR 65-4.6(d). Since the within arbitration request was filed on or 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 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with 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 New York

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

10/05/2021
(Dated)

Preeti Priya

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:
11c748805cd180a8ecfa680345023c02

Electronically Signed

Your name: Preeti Priya
Signed on: 10/05/2021