

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

DV Chiropractic Care PC d/b/a 21 Century  
Chiropractic Care  
(Applicant)

- and -

Mid-Century Insurance Company  
(Respondent)

AAA Case No.	17-21-1200-6194
Applicant's File No.	806629
Insurer's Claim File No.	7000824218-1-1
NAIC No.	21687

**ARBITRATION AWARD**

I, Fred Lutzen, 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 or "Assignor"

1. Hearing(s) held on 11/23/2021  
Declared closed by the arbitrator on 11/23/2021

Steve Slotnick, Esq., from Slotnick & Ashkenazy, LLP participated for the Applicant

Daniel Truong, Claims, from Mid-Century Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 630.00**, 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 female EIP (first initial "T") was 36-years-old when she was injured as the driver in an automobile accident on 12/21/19. She subsequently underwent several ultrasounds on 1/14/2020.

Applicant seeks reimbursement of \$630.00 for five (5) ultrasounds performed on 1/14/2020. Respondent denied reimbursement asserting that the correct CPT Codes are not listed in the Chiropractic Fee Schedule. Applicant billed under CPT Code 76999, a 'By Report' code, which is listed in the Chiropractic Fee Schedule.

**The issue presented is whether Applicant is entitled to reimbursement.**

#### 4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file ["MODRIA"] maintained by the American Arbitration Association, and the oral arguments of the parties' representatives.

Counsel appeared via Zoom video conference and there were no witnesses.

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 more than 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).

However, I also take appropriate evidentiary notice of the fee schedule and its ground rules. The disputed claims are broken down as follows:

DOS	CPT Code	Billed	Paid	Unpaid	Coder allows
1/14/2020	76999	120.00	0.00	120.00	0.00
	76999	120.00	0.00	120.00	0.00
	76999	120.00	0.00	120.00	0.00
	76999	150.00	0.00	150.00	0.00
	76999	120.00	0.00	120.00	0.00
		<b>630.00</b>	<b>0.00</b>	<b>630.00</b>	<b>0.00</b>

Respondent submitted a fee coder affidavit by Bonnie Xie, CPC, dated 5/10/2021. Ms. Xie states that reimbursement for the services at issue rendered by a Chiropractor are not reimbursable for the following reasons:

CPT 76999 is defined as "Unlisted ultrasound procedure (eg, diagnostic, interventional)." Applicant billed for 5 units of diagnostic ultrasound: one for cervical, one for thoracic, one for lumbar, one for the SI joint, and one for the right shoulder. From a coding standpoint, it is incorrect to bill CPT 76999 as the procedures performed are not unlisted ultrasound codes. Unlisted codes such as CPT 76999 is reserved only for procedures that do not have a specific code available. The ultrasounds of the cervical spine, thoracic spine, lumbar spine and SI joint/sacro-iliac spine should be coded with one unit of CPT 76800 which is defined as "Ultrasound, spinal canal and contents." One unit of CPT 76880 includes ultrasound of the entire spinal canal which includes the cervical spine, thoracic spine, lumbar spine and SI joint/sacro-iliac spine. The ultrasound of the right shoulder should be coded under CPT 76881/76882. CPT 76881 is defined as "Ultrasound, complete joint (ie, joint space and periarticular soft tissue structures) real-time with image documentation" whereas CPT 76882 is defined as "Ultrasound, extremity, nonvascular, real-time with image documentation; limited, anatomic specific." CPT 76881 is reserved for a more comprehensive ultrasound exam whereas CPT 76882 is reserved for a more limited ultrasound. It is improper to bill CPT 76999 for these ultrasounds as they are not unlisted procedures. In this case, based on the limited documentation and review, the proper code is one unit of CPT 76800 (spine ultrasound) and one-unit CPT 76882 (left shoulder ultrasound).

General Ground Rule 10 in the new 2018 Workers' Compensation Chiropractic Fee Schedule which prohibits chiropractors from billing under CPT codes not listed in their fee schedule. See General Ground Rule 10 'Codes in the Chiropractic Fee Schedule' which states "A chiropractor may only use CPT codes contained in the Chiropractic Fee Schedule for billing of treatment. A chiropractor may not use codes that do not appear in the Chiropractic Fee Schedule.

"General Ground Rule 19 of the New York Workers' Compensation Medical Fee Schedule, which states chiropractors (as well as podiatrist and psychologist) may not use CPT codes that do not appear in the applicable fee schedule relevant to the provider's scope of practice. CPT codes 76800 (spinal ultrasound) and 76881/76882 are codes listed in the physician fee schedule.

Unless the parties' agreement provides otherwise, an arbitrator need not apply the rules of evidence, is not bound by principles of substantive law, may do justice as he sees it, and may apply his own sense of law and equity to the facts as he finds them to be. Matter of New Century Acupuncture, P.C. v. Country Wide Ins. Co., 48 Misc.3d 1201(A), 18 N.Y.S.3d 580 (Table), 2015 N.Y. Slip Op. 50919(U) at 2, 2015 WL 3821534 (Dist. Ct. Suffolk Co., C. Stephen Hackeling, J., June 18, 2015).

In this case, Applicant/Chiropractor performed ultrasounds of the spine. There are no precise CPT Codes in the Chiropractic Fee Schedule (since the Amendment) that correspond to the levels of the spine that were subject of the ultrasounds performed by the within Applicant/Chiropractor.

It is also true that CPT Code 76999 appears in the Chiropractic Fee Schedule. **This can only mean that a chiropractor may bill for ultrasounds and, if it does, it must bill carriers using CPT Code 76999 and not the codes that do not appear in the Chiropractic Fee Schedule.**

In addition, as noted by Ms. Xie, the Medical Fee Schedule describes CPT Code 76800 as "Ultrasound, spinal canal and contents." The schedule does not have a Ground Rule explaining that a provider may only bill one unit of CPT Code 76800. Ms. Xie did not point to any reference, such as CPT Assistant, AMA, CPT Book, that explains a provider may only bill for one unit of CPT Code 76800.

The precise fee charged would be an appropriate point of contention for Respondent. However, the rationale by Ms. Xie is that "based on the limited documentation and review, the proper code is one unit of CPT 76800 (spine ultrasound) and one-unit CPT 76882 (left shoulder ultrasound)."

Because the workers' compensation fee schedule has assigned a "By Report" designation for these ultrasounds performed by a chiropractor, a provider billing under that CPT code is required to furnish certain additional documentation to enable the insurer to determine the appropriate amount of reimbursement. Applicant properly argues that where, as here, a provider does not provide such documentation with its claim form, and the insurer will not pay the claim as submitted, 11 NYCRR 65-3.5 (b) requires the insurer to, within 15 business days of its receipt of the claim form, request "any additional verification required by the insurer to establish proof of claim" (*see Bronx Acupuncture Therapy, P.C. v Hereford Ins. Co.*, 54 Misc 3d 135[A], 2017 NY Slip Op 50101[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017]).

As Respondent did not seek additional verification in this case, and further information or documentation appears to have been necessary to process this claim, I find in favor of Applicant as Respondent has failed to meet its burden of proof for its asserted fee schedule defense.

Moreover, while I may take appropriate of the fee schedule, I have no way of determining the appropriate fee without a fee coder report or some fee review explanation as guidance.

It is important that the Chiropractic Fee Schedule provides a Radiology conversion factor and lists CPT Code 76999 therein. If the same RVUs are calculated (for the corresponding services in the Medical Fee Schedule) applying the Region IV conversion factor, the allowable amounts exceed what was charged by Applicant herein.

### **Conclusion**

Having carefully considered the submissions of the parties, the relevant case law, and the arguments of respective counsel, I conclude that the preponderance of the credible

evidence supports a finding in favor of the Applicant. Respondent did not provide a plausible explanation for why a chiropractor may not bill for spinal ultrasounds using the only code listed in the Chiropractic Fee Schedule.

Applicant is awarded \$630.00.

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
	21st Century Chiropractic Care PC	01/14/20 - 01/14/20	\$630.00	Awarded: \$630.00
Total			\$630.00	Awarded: \$630.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/14/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. *See generally*, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month,

calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c); and OGC Op. No. 10-09-05 (interest accrues from date Applicant "*actually requests arbitration*" or commences a lawsuit). The Superintendent and the New York Court of Appeals have interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

#### C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." *Id.* However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 Onondaga

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

12/11/2021  
(Dated)

Fred Lutzen

#### **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:**  
e23c3dbc68973c4f6acf5bfe5c361b91

### **Electronically Signed**

Your name: Fred Lutzen  
Signed on: 12/11/2021