

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Precise Medical Solutions LLC  
(Applicant)

- and -

New South Insurance Company  
(Respondent)

AAA Case No. 17-20-1183-1001

Applicant's File No. BT20-118612

Insurer's Claim File No. 190258606-001

NAIC No. 12130

**ARBITRATION AWARD**

I, Glen Wiener, 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

1. Hearing(s) held on 02/22/2022  
Declared closed by the arbitrator on 02/22/2022

Sabine Sciarrotto, Esq. from The Tadchiev Law Firm, P.C. participated for the  
**Applicant**

Joseph Iacono, Esq. from Law Offices of Bobbi J. Vilacha participated for the  
**Respondent**

2. The amount claimed in the Arbitration Request, **\$2,207.38**, was AMENDED and permitted by the arbitrator at the oral hearing.

The total amount requested was amended to \$1,798.32 to reflect fee schedule reductions.

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

3. Summary of Issues in Dispute

Assignor M.M. a 44-year-old male injured his back in an automobile accident on November 6, 2019. Following the accident Assignor commenced numerous treatments with various healthcare practitioners. On July 27, 2020 still

experiencing radiating low back pains, a lumbar endoscopic rhizotomy and facet fusion with bone allograft were performed on Assignor. Respondent denied reimbursement for the surgery and all related procedures based on a peer review of Marc H. Appel, M.D. concluding the surgery was not medically necessary. In a prior arbitration, it was determined the surgery was medically necessary. See *BL Pain Management PLLC v. New So. Ins. Co.*, 17-21-1203-2627 (Arb G. Wiener Dec. 29, 2021).

During the surgery intraoperative neurophysiology monitoring [IONM] was performed. The monitoring was performed by Yaofei Hu, CNIM, a certified neurophysiological intraoperative monitoring technologist, from Applicant Prompt Medical Spine Care PLLC who was present in the operating room. The data was interpreted by a physician outside the premises. Applicant sought reimbursement for the technical component [TC] of the IONM.

Based on the prior decision, Respondent does not contest the medical necessity of the services provided. However, Respondent avers [1] the services provided by technologists are bundled into the EAPG facility payment and cannot be reported separately and [2] technologists are not eligible for separate reimbursement under the New York State Workers' Compensation Fee Schedule.

The primary question presented is whether Respondent's interpretation of the fee Schedule is accurate.

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

The decision below is based on the documents on file in the Electronic Case Folder maintained by the American Arbitration Association as of the date of this hearing and on oral arguments of the parties. No witness testimony was produced at the hearing.

Applicant Precise Medical Solutions LLC as assignee of M.M. seeks \$1,798.32 additional reimbursement, with interest and counsel fees, under the No-Fault Regulations, for technical component [TC] of intraoperative neurophysiology monitoring [IONM] conducted on Assignor.

Respondent New South Insurance Company insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., Respondent was obligated to reimburse the injured party (or their assignee) for all "reasonable and necessary" medical arising from the use or operation of the insured vehicle.

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An insurer has the burden of showing as a matter of law that said claims reflect the incorrect amount for services provided. *Jamil M. Abraham, M.D., P.C. v. Country Wide Ins. Co.*, 3 Misc.3d 130[A], 787 N.Y.S.2d 678 (App. Term 2d & 11th Jud. Dist 2007); *New Era Massage Therapy, P.C. v. Progressive Cas. Ins. Co.*, 2009 N.Y. Misc. Lexis 2554, 242 N.Y.L.J. 2 (Sup. Ct. Queens Co. June 26, 2009).

In support of its denial Respondent submitted an affidavit from Patricia M. Macy, RN, JD, PMP, CPC-C, CRC, CPMA. Ms. Macy is a lawyer and a Certified Professional Coder through the American Academy of Professional Coders. A Certified Professional Coder has proven by rigorous examination and experience that they know how to read a medical chart and assign the correct diagnosis (ICD-9), procedure (CPT®), and supply (HCPCS Level II) codes for a wide variety of clinical cases and services. Accordingly, she is deemed an expert in the field of medical coding.

Ms. Macy stated:

*The services of technologists/ancillary staff are bundled in facility payments (EAPG for ambulatory surgery centers, DRG for hospitals). There is no provision in the NYS WC FS for direct payment of a technologist's claims.*

*The services in this report were rendered at an ambulatory surgery center (ASC). Technical services rendered in such a facility are reimbursable to the facility utilizing the EAPG reimbursement methodology.*

*For reference, according to the Centers for Medicare and Medicaid Services, if the hospital provides the technical component of the IONM service or pays an outsourced provider for the technical service, the hospital may seek reimbursement. Note that Medicare and several other payors do not reimburse separately for the technical component. The technical component (-TC) of IONM is considered by Medicare to be part of the inpatient service and is not reimbursed separately from the MS-DRG.*

*Similar to the MS-DRG system, utilized for reimbursement to Medicare recipients, the payment systems used for Workers' Compensation/No-Fault inpatient and outpatient services rendered in a facility or surgical center reimburse for all technical inputs (labor, supplies, equipment, capital, and overhead) to the facility. The services in this report appear to be a contracted service. The technical component of the intraoperative monitoring is inclusive to facility reimbursement and is not separately reportable.*

Once Respondent met its prima facie burden of showing that the amounts charged by a provider were in excess of the fee schedule, the burden shifted to Applicant "to show that the charges involved a different interpretation of such schedule or an inadvertent miscalculation or error". *Cornell Med., P.C. v Mercury Cas. Co.*, 24 Misc.3d 58 (App Term 2d Dept., 2d, 11th & 13th Jud. Dist. 2009).

Applicant submitted a rebuttal from a coding expert, Alpa Prajapati, CPC, indicating:

*While it is true that this provider rendered service in a facility, it does not follow that a physician or technologist cannot be separately reimbursed for services if performed in a facility. Physicians and technologists can, in fact, be separately reimbursed beyond the reimbursement that the facility is entitled to. For support, Ms. Macy refers to the Centers of Medicare and Medicaid Services for the proposition that technical components of IONM are included in the facility fees. She then analogizes this guidance from CMS (which is inapplicable to No-Fault and Workers'*

*Compensation) to the case at hand. She concludes, without further reasoning, that a technologist's IONM service is included in the facility fee.*

Mr. Prajapati concludes "*Physicians and technologists can, in fact, be separately reimbursed beyond the reimbursement that the facility is entitled to*". He then goes on to dispute the authority, *Center for Medicare Studies* (CMS), offered by Ms. May in support of her position. Significantly, Mr. Prajapati does not provide any support for his contrary conclusion that a technologist's fee is not bundled into EAPG reimbursement.

Mr. Prajapati argues that since a TC and professional component are noted in the Fee Schedule then it must be proper. However, this is beside the point as someone other than a technologist such as a physician, nurse, or physician assistant could have performed the technical component and undoubtedly received reimbursement. The question herein, is whether a technologist's fee is bundled into EAPG reimbursement. Applicant only responded with an unsupported conclusion.

Respondent's position is unchallenged as Applicant did not submit any evidence that **meaningfully referred to or discussed** the determination of Respondent's expert. See *Pan Chiropractic P.C. v. Mercury Ins. Co.*, 24 Misc.3d 136A (App. Term 2d, 11th, and 13th Jud. Dist. 2009). See also *Favorite Health Products Inc. v. GEICO Ins.*, 26 Misc.3d 145A (App. Term 2d, 11th, and 13th Jud. Dist. 2010), *Complete Orthopedic Supplies, Inc. v. State Farm Mut. Auto. Ins. Co.*, 23 Misc.3d 5 (App. Term 2d Dept. 2009). For this reason alone, it is determined a technologist's services are included in a facility fee.

This is a very complex issue involving both law and medical coding. Only a single authority, CMS, addressing this issue was provided in this proceeding. Extensive research into both EAPG formulation and legislative intent might provide insight. Legal or governmental decisions/policy statements would also be valuable. Legal research failed to uncover any court case in this jurisdiction. However, this does not indicate there is no NYS WCB decision or another jurisdiction's court's determination on this issue. In addition, the undersigned lacks access to 3Ms propriety software and manuals to research the coding perspective. There was also concern of uncovering and relying on documents that might dehor the record.

Hence, this decision is not an actual determination on the issue but rather an evidentiary determination Respondent's evidence was not adequately rebutted by Applicant.

Lastly, the issue of whether a certified technologist is a professionally licensed healthcare provider entitled to separate reimbursement under the Workers' Compensation need not be addressed due to the above determination.

Accordingly, Applicant's request for reimbursement is denied. This award is in full disposition of all No-Fault benefit claims submitted to this arbitrator.

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 claim is DENIED in its entirety

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

03/09/2022  
(Dated)

Glen Wiener

**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:**  
0f67421ea7eb3c097c959ee8445e0048

### **Electronically Signed**

Your name: Glen Wiener  
Signed on: 03/09/2022