

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

JTK Chiropractic Care PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-21-1229-7088
Applicant's File No.	GTLJTK111821.004
Insurer's Claim File No.	8705077310000001
NAIC No.	22055

ARBITRATION AWARD

I, Evelina Miller, 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: MN

1. Hearing(s) held on 06/21/2022
Declared closed by the arbitrator on 06/21/2022

George Lewis Esq from Law Offices of George T. Lewis, Jr., PC participated for the Applicant

Robert Sheridan Esq from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,770.00**, 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

The dispute arises from the underlying automobile accident on April 21, 2021, in which the Assignor (MN), a 33-year-old male was involved. Thereafter, Assignor sought private medical attention and was eventually evaluated by Applicant, with complaints of neck pain, mid back pain, lower back pain shoulder pain, knee pain and hand pain. Eventually patient was recommended to undergo diagnostic ultrasound which was performed on the patient on 5/19/21 and 6/9/21. Respondent contends that Applicant billed for the services at issue in excess of the New York Workers' Compensation Fee Schedule. Respondent further contends that Applicant has been reimbursed in full for the dates of service in dispute.

The issue presented at the hearing is whether Respondent reached its burden of coming forward with competent evidentiary proof to support its fee schedule defenses or whether Applicant has been reimbursed in full for dates of service of 5/19/21 and 6/9/21.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in MODRIA which are maintained by the American Arbitration Association. These submissions are the record in this case. My decision is based on my review of that file, as well as the arguments of the parties at the hearing. This hearing was conducted via ZOOM.

I find that Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and amount of the loss sustained, had been mailed and received and that payment of no-fault benefits were overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, (2d Dept., 2004). Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See *Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004, NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

For the dates of service in dispute Applicant billed for diagnostic ultrasound in the amount of \$885.00 for each date of service of 6/9/21 and 5/19/21.

Upon receipt of Applicant's bills for dates of service of 5/19/21, and 6/9/21, Respondent issued payment in the amount of \$885.00 for date of service of 6/9/21, and 5/19/21 for date of service of 5/19/21. Applicant contends that it is entitled to further reimbursement in the amount of \$147.50 for date of service of 5/19/21.

Fee Schedule:

The rates charged by Applicant must be in accordance with Insurance Law § 5108, as the charges for services rendered "shall not exceed the charges permissible under the schedules prepared and established by the chairman of the Workers Compensation Board for Industrial Accidents, except where the insurer or arbitrator determines that unusual procedures or unique circumstances justify the excess charge."

In addition, § 5108 (c) states that, "no provider of health services... may demand or request any payment in addition to the charges authorized pursuant to this section."

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). 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, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't, per curiam, 2006).

Effective April 1, 2013 11 NYCRR 65-3.8(g)(1) has been amended so that the application of the New York State Worker's Compensation fee schedule is no longer a precludable defense and no payment is due on those claims in excess of the fee schedule. Per 11 NYCRR 65-3.8(g), where the services were rendered after April 1, 2013, a defense of excessive fees is not subject to preclusion Surgicare Surgical Associates v. National Interstate Ins. Co., Misc.3d, N.Y.S.3d, 2015 N.Y. Slip Op. 25338 (App. Term 1st Dept. Oct. 8, 2015), aff'g, 46 Misc.3d 736, 997 N.Y.S.2d 296 (Civ. Ct. Bronx Co. 2014) (New Jersey fee schedule). The insurer is entitled to reduce the bills to the proper fee schedule amount.

In support of the fee schedule reduction Respondent submits an affidavit by Crystal Russo CPC. Ms. Russo acknowledged that CPT Code 76999 is included in the 2020 Chiropractic Fee Schedule, as an unlisted ultrasound procedure (eg, diagnostic, interventional) with a relative value of "BR" (By Report). Ms. Russo maintained that based upon the time, skill, and equipment utilized to provide the services here, CPT Codes 76800, 76536, 76604, 76705, 76881, and 76882 best represent the services performed. Ms. Russo offered a detailed description of each of these codes. Ms. Russo then concluded that the Applicant could not bill for the services described by those CPT Codes (76800, 76536, 76604, 76705, 76881, 76882) because at the time the services here were provided General Ground Rule 10 of the Workers' Compensation Chiropractic Fee Schedule, was in effect (as of April 1, 2019) and established that "[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."

I find the affidavit by Crysta Russo to be credible and persuasive. Based on the above, I find that Respondent reached its 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. Supra.

Applicant does not submit an affidavit by a CPC, or from anyone with personal knowledge of the New York Workers' Compensation Fee Schedule.

I find Respondent's evidence to be more persuasive.

Accordingly, I find that Applicant is not entitled to further reimbursement.

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 Kings

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

07/19/2022
(Dated)

Evelina Miller

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:
b76c8ffbf06782bf8b880e1e08b51a13

Electronically Signed

Your name: Evelina Miller
Signed on: 07/19/2022