

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

South Shore Osteopathic Medicine PC  
(Applicant)

- and -

Nationwide General Insurance Company  
(Respondent)

AAA Case No. 17-22-1249-0453

Applicant's File No. none

Insurer's Claim File No. 697868-GM

NAIC No. 23760

**ARBITRATION AWARD**

I, Teresa Girolamo, Esq., 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: W.V.

1. Hearing(s) held on 10/18/2022  
Declared closed by the arbitrator on 11/26/2022

Anne Goldman, Esq. from Law Office of Anna Goldman P.C. participated in person for the Applicant

Michelle Rita, Esq. from Hollander Legal Group PC participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,402.37**, 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

Whether Applicant is entitled to any recovery as Respondent contends that it paid as per the PPO Agreement and that one code there is no reimbursement.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing. This decision is based on my review of that file, as well as the arguments of the parties at the hearing. Each of the parties appeared via ZOOM.

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, P.C. v. Mercury Casualty Co.*, 24 Misc.3d 58, 884 N.Y.S.2d 558 (App. Term 2d, 11th & 13th Dists. 2009).

In this case on 12/4/2021 W.V. was involved in an accident. Applicant South Shore Osteopathic Medicine PC filed for Arbitration on 5/4/2022 seeking reimbursement is \$1,402.37 for dates of service of 2/22/2022 - 2/23/2022. Michael Yuryev, D.O. is listed as the provider on the bill. Applicant billed \$1,700.00 and was reimbursed \$297.63 leaving the disputed amount of \$1,402.37. According to the EOR each of the charges were reduced based upon the Explanation PPO.

**Bill 1: Date of Service 2/22/2022**

CPT Code 99204 25 \$550.00

CPT Code 93000 59 \$250.00

CPT Code 36415 \$200.00

CPT Code 99000 \$150.00

Total: \$1,150.00

**Bill 2: Date of Service 2/23/2022**

CPT Code 99358 \$550.00

For these services, Applicant was advised as follows:

*"PPO is Applied. PPO reduction based on provider's contract with MultiPlan (MULTIPLAN)."*

For CPT Code 99000 no payment was made with the separate explanation as follows:

*NC represents services that are not covered by the State of New York. These services have no reimbursement allowance and are not covered under the New York State Worker's Compensation Fee Schedule guidelines. See introduction and General Guidelines.*

**Issue presented:**

Respondent argues at the hearing that it paid Respondent as per the PPO agreement however, Applicant argues that it was not part of the PPO Agreement at the time of the dates of service.

As such, the parties were provided with the following disposition:

**Briefs due from Both parties by 11/18/2022:**

Each party can provide additional information regarding Magnacare and Affidavits of fee schedule outside of Magnacare if not applicable

This matter was therefore closed. The following is my review of the evidence presented.

Respondent's Evidence offered:

**MagnaCare**

Respondent offers a letter from MagnaCare dated 7/13/2013 welcoming Michael Yuryev, D.O. with an effective date of 7/22/13. The Application is signed by Michael Yuryev, D.O. on 6/21/2013.

Respondent also offers a letter from MagnaCare dated 6/3/2021 signed by a Casualty Support Specialist with MagnaCare regarding Michael Yuryev, D.O. confirming the enrollment date and providing information regarding fee schedule as of 1/13/2021.

The affidavit of Nydia Flores, states that she is currently employed with Brighton Health Plan Solutions, d/b/a MagnaCare and have been employed with said company for 15 years. At paragraph 11 Michael Yuryev, D.O. has regularly accepted the MagnaCare fee schedule as full payment. This Affidavit states at paragraph 14, "Dr. Michael Yuryev has been a member of the network for over six (6) years. This contract was still in effect on the dates of service in question. A true and accurate copy of the contract is annexed hereto as an Exhibit."

At paragraph 17, a new contract was entered into in effect in 2019 when MagnaCare restricted its business and states, "*In 2019, MagnaCare separated its group health business and its casualty business, which services workers compensation and no-fault customers, into two distinct entities. The casualty business is now Brighton CS Network, LLC, DBA as MagnaCare Casualty. In 2019, MagnaCare amended this and all providers' contracts to represent this change. At that time, this and all providers received two separate provider agreements, one from each of the two new business entities.*"

Paragraph 20 states, "Article VII of the Provider Participation Agreement states that disputes not submitted to MagnaCare for resolution prior to commencement of litigation or a claim in another forum and/or which are not submitted to litigation or another forum within the lesser of one (1) year from the remittance, or the time set

forth in an applicable rule or regulation, shall be deemed waived and forever discharged."

(I note that this affidavit was with respect to a Civil Court action, and not the case herein as such it is uncertain what date of service is referenced.).

**Summary:** This Affidavit is dated 6/4/2021, however many not apply in this case as the dates of service herein are subsequent to this date and are in fact 2/22/2022 - 2/23/2022. At this juncture it is confirmed that Michael Yuryev, D.O. was a member of MagnaCare from 2013 at least as of 1/13/2021.

## **2) Affidavit Melissa Cox**

This affidavit was prepared for this case. Ms. Cox states that she has been employed with Respondent since 2/21/2022 which would therefore be one day prior to the dates of service.

### **Summary:**

This affidavit does not provide any relevant information as to whether or not Michael Yuryev, D.O. was a part of any PPO on the date of service. I also note that the affidavit is not signed. (see page 88/88 of Respondent's original submission.)

## **3) Affidavit of Mary Fries:**

This affidavit was prepared for this case.

**Summary:** This affidavit confirms that payment was made to Michael Yuryev, D.O. as per a PPO Agreement.

## **4) Affidavit of Russell Arnold:**

This affidavit, prepared for this case is a Coder Affidavit. At paragraph 6, same provides each code that was billed and what was paid at a PPO Agreement. Paragraph 7 states that CPT Code 99000 is not covered under NY Worker's Compensation fee schedule. At paragraph 8 Russell Arnold provides the reimbursement per code billed.

### **Summary:**

This does not provide the fee schedule for Non-PPO members.

## **5) Provider Agreement Certification Affidavit:**

Respondent offers an Affidavit by Heidi Goldsherry, that MultiPlan Inc on behalf of itself and its subsidiaries ("MPT") and that MPRI has a contract with AIS to provide client and/or client's access to MPI's network.

Paragraph 2, states, that Michael Yuryev, D.O. on or about 12/27/13. Paragraph 5 provides the codes bills, what is allowable in New York State and what is allowed under the PPO Agreement.

**Summary:**

Based upon this affidavit, for the billing submitted, if Applicant was not within the PPO for the dates of service Applicant is entitled to \$203.76 for CPT Code 99204 24. In looking at the NF-10, Applicant billed \$550.00 and was reimbursed \$170.05 leaving a disputed amount under fee schedule as \$33.71.

For the second code billed under CPT Code 93000 the NYS fee schedule is \$72.95 with the contracted PPO rate of \$15.10 would leave an amount of \$57.85 due. As per the NF-10 Applicant was reimbursed \$15.10

For the third charge under CPT Code 36415 Applicant billed \$200.00 with the state fee schedule of \$10.08 wherein Applicant is entitled to \$2.49 as per PPO. This would leave a disputed amount of \$7.59. The payment of \$2.49 is confirmed based upon a review of the Explanation of Review.

For the next code of 99000 as per the affidavit of Russell, there is no recovery. The Explanation of Review for this code states:

*NC represents services that are not covered by the State of New York. These services have no reimbursement allowance and are not covered under the New York State Worker's Compensation Fee Schedule guidelines. See introduction and General Guidelines.*

Therefore, adding the amount possibly due to Applicant for the first bill is  $\$33.71 + \$57.85 + \$7.59 = \$99.15$ .

For the second bill Applicant billed under CPT Code 99358 with a state fee schedule of \$280.12 with payment of \$109.99 for a difference of \$172.13. This was incorporated with the first bill on the Explanation of review; \$109.99 was paid.

At this juncture, the evidence has established that IF Applicant is not a member of a PPO Applicant would be entitled to an additional payment of ONLY  $\$99.15 + \$172.13 = \$271.28$ .

As such, as the trier of fact at this point, I find that Applicant overbilled whether or not as part of a PPO, and I hereby reduce the amount in in dispute to \$271.28 based upon the above-mentioned evidence.

**Applicant's Evidence presented:**

**1) Email: Credentialing Status Update: 10/28/2021**

This email is from WCH Service with no explanation as to the connection with MagnaCare. The email addressed to Michael Yuryev, D.O., states that the insurance name is Magnacare, and the "work Type", is a termination of a Tax ID.". The status is approved and the Additional Information states, "Provider is terminated from MagnaCare network, termination date 10/19/2021."

**Summary:**

At the time of the hearing I advised Applicant that an email from an unknown Service Bureau, without a link or some affidavit affirming termination with MagnaCare, something in a legal format would not be acceptable as admissible evidence. This was the reason why the disposition was issued in the first place.

For a post hearing submission, Applicant offers the same email, to which the same response is made, it is legally insufficient to establish that Applicant was not part of MagnaCare on the dates now in dispute.

However, in preparing this award, I note that there is a 3 page Affidavit of Michael Yuryev, D.O. that was uploaded on 6/28/2021 and was not argument nor discussed at the time of the original hearing.

**Affidavit of Michael Yuryev, D.O.**

According to Michael Yuryev, D.O, he provided services for dates of service of 2/22/2022- 2/23/2022 billed in the amount of \$1,700.00 of which he was reimbursed \$297.63 instead of \$1,700.00 of which \$1,402.37 is in dispute. Paragraph 5 states that he strongly disagrees with the carrier's reimbursement of the bill.

Paragraph 6 of the affidavit discusses why he billed the amount he billed for date of service of 2/22/2022 and paragraph 8 addressed the billed amount for 2/23/2022.

Shockingly, there is not one mention by Michael Yuryev, D.O. that he was not a member of a PPO for the dates of service.

**Final Determination:**

I find herein based upon the evidence submitted by Respondent that despite the lack of evidence of Michael Yuryev, D.O. to the contrary, Respondent has not offered any actual evidence that Michael Yuryev, D.O. was a signatory to the MagnaCare contract on the dates of service. The burden of proof regarding proper payment rests on Respondent in this case.

I do note for the record that the burden has not shifted back to Applicant regarding fee schedule and do not credit the email with any weight of evidence.

As such, Applicant is awarded \$271.28 ONLY as it is clear from a reading of the fee schedule, and the affidavits and evidence that Applicant overbilled in this case.

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
	South Shore Osteopathic Medicine PC	02/22/22 - 02/23/22	\$1,402.37	Awarded: \$271.28
Total			\$1,402.37	Awarded: \$271.28

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/04/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is payable from 5/4/2022 to date of payment.

C. Attorney's Fees

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

Interest is payable from 5/4/2022 to date of payment.

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

11/27/2022  
(Dated)

Teresa Girolamo, Esq.

#### **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:**

14f2c3fcf3fbcaa32941c54188d75ace

### **Electronically Signed**

Your name: Teresa Girolamo, Esq.  
Signed on: 11/27/2022