

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All City Family Healthcare Center
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-21-1224-6734

Applicant's File No. BT21-152489

Insurer's Claim File No. 21-7468367

NAIC No. 10192

ARBITRATION AWARD

I, Victoria Thomas, 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 12/14/2022
Declared closed by the arbitrator on 12/14/2022

Krikor Ghazarian from The Tadchiev Law Firm, P.C. participated in person for the Applicant

Danielle Mazzola from Progressive Casualty Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$6,844.50**, 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

Did Respondent prove its fee schedule defense?

The Assignor, 'GB' was involved in a motor vehicle accident on 3/18/21. Applicant billed for facility fees related to right shoulder surgery conducted on 5/13/21. Respondent partially paid the claims indicating that the fees exceeded the fee schedule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the file regarding this matter maintained by the AAA in the eCenter. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim, by the submission of a completed NF-3 form documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the 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 Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Fee Schedule

The New York Worker's Compensation Fee Schedule (WCFS) is given judicial notice and is applied accordingly. See, *Kingsbrook Jewish Hospital v. Allstate*, 61 AD3d 13, 20 (2nd Dept. 2009). When raising a fee schedule defense, Respondent has the burden to come forward with competent evidentiary proof to support its fee schedule defenses. *Robert Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co.*, 13 Misc. 3d. 172 (Civ. Ct. Kings Co. 2006). When a Respondent fails to demonstrate by competent evidentiary proof that an Applicant's claim was more than the appropriate fee schedules, Respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. *Continental Medical, P.C. v. Travels Indemnity Co.*, 11 Misc. 3rd 145A (App. Term 1st Dept. 2006).

Applicant submitted the following claims for shoulder surgery:

CPT 29821: Arthroscopy, shoulder, surgical with debridement, \$5,677.77.

CPT 29823-59: Arthroscopy, shoulder, synovectomy, \$1,472.45.

CPT 29825-59: Arthroscopy, shoulder, surgical with lysis and resection of adhesions, with or without manipulation; \$1,472.45;

CPT 23405: Tenotomy, shoulder area, \$1,839.77

CPT A4649: Surgical supply, miscellaneous, \$72.00

Respondent partially denied the claims and submitted the affidavit of Karen McCauley who indicated the following:

CPT Code 29823 should be partially paid in the amount of \$3,760.88.

CPT Codes 23405, 29825, and 29821 the services are an integral part of a medical visit and does not warrant a separate reimbursement and the documentation submitted does not support use of modifier 59.

CPT Code 4649 is assigned a weight of "0".

I find Respondent's coder affidavit credible, Respondent previously reimbursed Applicant in the amount of \$3,760.88 (reduced by \$70.94 deductible), and no further reimbursement is owed on the claims.

Therefore, Applicant's claims are denied.

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 Nassau

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

01/13/2023
(Dated)

Victoria Thomas

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:
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Electronically Signed

Your name: Victoria Thomas
Signed on: 01/13/2023