

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Steven Wong, MD  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No. 17-22-1251-2772

Applicant's File No. WSPC 179.01

Insurer's Claim File No. 0650720931

NAIC No. 19240

**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: CT

1. Hearing(s) held on 01/10/2023  
Declared closed by the arbitrator on 01/10/2023

Michael Lamond Esq from Akiva Ofshtein PC participated for the Applicant

Robert Quin Esq from Law Offices of John Trop participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$700.39**, 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 November 29, 2021, in which the Assignor (CT), a 40-year-old-female was involved. Thereafter, Assignor sought private medical attention and was eventually evaluated at Macintosh Medical P.C. with complaints of headaches, pain in the lumbar spine, pain in the knee, and pain in the arm. Eventually patient was recommended to undergo shockwave therapy. The bill in dispute is for shockwave therapy performed on the patient on 3/2/22. Respondent contends that Applicant billed in excess of the New York Workers' Compensation Fee Schedule.

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

#### 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]).

#### **Fee Schedule**

For the date of service of 3/2/22 Applicant billed for shockwave therapy with CPT code 0101T in the amount \$700.39 per unit for total of 3 units.

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.

Respondent contends that Applicant is entitled to reimbursement of only one unit of shockwave therapy performed on same date. As such, Respondent reimbursed Applicant for 1 unit of shockwave therapy in the amount of \$700.39.

I am permitted to take note of the New York State Workers' Compensation Fee Schedule. See Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D.3d 13, 20 (2d Dept. 2009); LVOV Acupuncture, P.C. v. Geico Ins. Co., 32 Misc.3d 144(A), 2011 NY Slip Op 51721(U) (App Term 2d, 11th & 13th Jud Dists. 2011); Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 NY Slip Op 50040(U) (App Term, 1st Dept. 2011). I find the following.

The 2018 NYS fee schedule effective 10/1/2020 includes code 0101T with an RVU value of 2.78. Also, according to said fee schedule under section 9 Category III Codes (page 381) that code 0101T is subject to the conversion factor from the "Surgery" section. Region IV (4) surgery conversion factor is  $\$251.94 \times 2.78 = \$700.39$ .

It is also noted that the provider billed code 0101T at 3 units per date of service. This is incorrect billing. Per AMA CPT lay description for 0101T it states:

*High-energy extracorporeal shock wave delivery involves the application of pressure waves that travel through fluid and soft tissue, with effects of the shock wave occurring at sites where there is a change in impedance, such as the bone-soft tissue interface. Extracorporeal shock wave therapy is used to treat common orthopaedic conditions (i.e., plantar calcaneal spurs, epicondylopathy humeri radialis) because of the therapy's stimulatory effect on bone formation. Other potential uses of extracorporeal shock wave therapy include treating bone marrow hypoxia and subperiosteal hemorrhage, increasing regional blood flow, and activating osteogenic factors such as bone morphogenic protein, direct cellular effects, and mechanical effects as a result of strain gradients.*

According to the rules of the "Medically Unlikely Edits" (MUE) for code 0101T, only one (1) unit of service per day is allowed. (see attached)

An MUE for a HCPCS / CPT code is the maximum units of service that a provider would report under most circumstances for a person on a single date of service. The MUE Adjudication Indicator (MAI) indicates the type of MUE and its basis. The MAI

unit assigned to HCPCS/CPT codes will determine how your claim will process and/or deny. Note, Medically Unlikely Edits (MUE) for codes with a MAI of "3" are date of service edits. These are "per day edits based on clinical benchmarks".

Again, according to the rules of the "Medically Unlikely Edits" (MUE) for code 0101T, only one (1) unit of service per day is allowed. A MUE for a HCPCS / CPT code is the maximum units of service that a provider would report under most circumstances for a person on a single date of service.

The medical records validate that the provider is doing shockwave treatment to the Lumbar spine, right arm, and the right knee. Code 0101T is not defined by the AMA CPT as a 'per anatomic site' treatment but instead, for high energy extracorporeal shockwaves involving the musculoskeletal (MS) system. The MS system includes multiple muscles and ligaments in the body.

Based on the above code 0101T definition and the MUE edit that validates a once per day procedure, code 0101T paid x 1 unit only.

Place of service is Brooklyn, NY 11209 which falls under geographical region IV of the Fee Schedule for which the conversion factor for the surgery section is \$251.94. Therefore, the allowance for code 0101T is calculated as follows: RVU 2.78 x \$251.94 region IV surgery section conversion factor = \$700.39"

As such, I find that Applicant is entitled to the total of one unit of shockwave therapy in the amount of **\$700.39** performed on 3/2/22. Since Respondent had already reimbursed Applicant in the amount of \$700.39, I find that Applicant is not entitled to further reimbursement for date of service of 3/2/22.

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.

02/08/2023

(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:**  
7a95ea1ad9c08f367a65ecc7f4b5367c

### **Electronically Signed**

Your name: Evelina Miller  
Signed on: 02/08/2023