American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PTJ Medical Services, PC (Applicant)	AAA Case No.	17-22-1258-9729
	Applicant's File No.	120706
- and -	Insurer's Claim File No.	8723514810000002
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Matthew K. Viverito, 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: EIP

1. Hearing(s) held on 04/13/2023
   Declared closed by the arbitrator on 04/13/2023

   Robin Grumet from Law Offices of Eitan Dagan (Woodhaven) participated virtually for the Applicant

   Iqra Shah from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,085.76**, 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

   This arbitration arises out of medical treatment for the EIP, a 31 year old female passenger, related to injuries sustained in a motor vehicle accident that occurred on 2/3/22. Applicant seeks reimbursement in the amount of $1,085.76, which represents the remaining balance after partial payment for an office visit and EMG/NCV testing of the upper and lower extremities performed on 4/7/22. Respondent denied payment of the remaining balance based on fee schedule. The issue presented is whether respondent can sustain its fee schedule defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in MODRIA. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in MODRIA and maintained by the American Arbitration Association.

Applicant originally billed $2,680.20 for an office visit and EMG/NCV testing of the upper and lower extremities. Respondent issued a payment in the amount of $1,594.44 leaving a balance of $1,085.76. Respondent issued payment in full for codes 99205, 95886 and 95911. Respondent denied reimbursement for code 95905.

Applicant billed for the EMG testing per extremity, by using code 95886. In addition, applicant billed for the Motor and/or sensory nerve conduction testing per extremity by using code 95905, along with modifier 51. As mentioned above, respondent fully reimbursed applicant for the EMG testing and denied payment for the Motor and/or sensory nerve conduction testing stating:

Paragraph 5 of the NYS Workers Compensation Guidelines Introduction and General Guidelines states to refer to the CPT book for an explanation of coding rules and regulation not listed in this schedule. Moreover, guidance from the CPT Book and CPT Assistant is incorporated into the no-fault law pursuant to Insurance Law 5108 and 11 NYCRR 68.0, 68.1[a][1]. See Glob. Liberty Ins. Co. v. McMahon, 172 A.D.3d 500 (2019). CPT Professional has parenthetical instructions stating the following: Report 95905 only once per limb studied and do not report 95905 in conjunction with 95885, 95886, 95907-95913. The AMA CPT Assistant dated March 2013 supports each of those parenthetical instructions emphasizing that 95905 would be reported for each limb, and it would not be appropriate to report code 95905 in addition to codes 95885, 95886, or 95907-95913. Therefore, this charge for 95905 is denied.

It is respondent's burden to come forward with competent evidentiary proof to support its fee schedule defense. Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 13 Misc.3d 172, 822 N.Y.S.2d 378 (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, its defense of noncompliance with the appropriate fee schedules cannot be sustained. Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847 (App. Term, 1st Dept. 2006).

In support of its defense, respondent has submitted a portion of the CPT assistant. The CPT assistant for code 95905 states:

Motor and/or sensory nerve conduction, using preconfigured electrode array(s), amplitude and latency/velocity study, each limb, includes F-wave study when performed, with interpretation and report; (Report 95905 only once per limb) (Do not report 95905 in conjunction with 95885, 95886, 95907-95913).

I note that although applicant billed code 95905 along with modifier 51 (Multiple Procedures), the Fee Schedule states that code 95905 is a Modifier 51 Exempt code. I

therefore find that the applicant's use of modifier 51 was improper. Furthermore, since the CPT assistant specifically states that code 95905 cannot be billed with code 95886, I find that respondent has demonstrated by competent evidentiary proof that applicant billed in excess of the Fee Schedule for the Motor and/or sensory nerve conduction testing in dispute.

Applicant was unable to rebut respondent's position in any meaningful way.

Accordingly, applicant's claim is 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 NY
SS :
County of Nassau

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

04/14/2023
(Dated)

Matthew K. Viverito

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:
a55e06d5214f70d66156828d4ccb2b74

Electronically Signed

Your name: Matthew K. Viverito
Signed on: 04/14/2023