

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All Wellness Acupuncture PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-22-1251-6143

Applicant's File No. LIP-18645

Insurer's Claim File No. 0521416430000001

NAIC No.

ARBITRATION AWARD

I, Ben Feder, 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: IP or assignor

1. Hearing(s) held on 04/27/2023
Declared closed by the arbitrator on 04/27/2023

Lee-Ann Trupia from Law Office of Ilya E. Parnas participated virtually for the Applicant

Jenna Pettograsso from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,378.82**, 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 IP, an 18 year old female, related to injuries sustained in a motor vehicle accident that occurred on 4/15/20. Applicant seeks reimbursement for acupuncture services provided to the IP from 7/1/20 through 9/30/20. Respondent timely sought further verification of treatment, and timely denied payment of the services based upon 11 NYCRR Section 65-3.8(b) (3), otherwise known as the "120 day rule". In addition, Respondent asserts that Applicant billed in excess of the appropriate fee schedule for the acupuncture services known as cupping.

Whether Respondent's denial, based on the 120 day rule, can be upheld?

Whether Applicant billed in excess of the appropriate fee schedule for the acupuncture services known as cupping?

4. Findings, Conclusions, and Basis Therefor

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2nd and 11th Judicial Districts]). The burden shifts to the insurer to prove that the services were not medically necessary.

The Respondent denied the claim in reliance on 11 NYCRR Section 65-3.8(b)(3) which provides that "an insurer may issue a denial, if, more than 120 calendar days after the initial request for verification, the Applicant has not submitted all verification under the Applicant's control or possession or written proof providing reasonable justification for the failure to comply." Respondent's denial asserts that Applicant failed to comply with the verification requests within 120 days.

An insurer is not obligated to pay or deny a claim until it has received verification of all relevant information requested. 11 NYCRR § 65.15 (g) (1) (I); 2 (iii). See Hosp. for Joint Diseases v. New York Cent. Mut. Fire Ins. Co., 2007 NY Slip Op 08038 (App. Div. 2d Dept.); Mount Sinai Hosp. v. Chubb Group of Ins. Cos., 2007 NY Slip Op 06650 (App. Div. 2d Dept.); New York & Presbyterian Hosp. v. Progressive Cas. Ins. Co., 2004 NY Slip Op 01750 (2d Dept. May 26, 2004); Eagle Surgical Supply, Inc. v. Travelers Indem. Co., 2010 NY Slip Op 51775(U) (App Term 2d Dept. Oct. 5, 2010); Beta Supply, Inc. v. Geico, 2008 NY Slip Op 51406(U) (App Term 1st Dept., July 16, 2008); Bronx Expert Radiology P.C. v. Travelers Ins. Co., 2006 NY Slip Op 51227(U) (App Term 1st Dept., June 29, 2006); Elite Chiropractic Services, PC v Travelers Ins. Co., 9 Misc. 3d 137(A), 2005 NY Slip Op. 51735(U) (2005).

The relevant record is clear. Respondent requested that a representative from Applicant appear for examinations under oath (EUO). On 10/29/2020 Nida Ahmad, owner, appeared for an EUO on behalf of Applicant. Respondent then delayed payment of the disputed charges for post-EUO verification requests it maintains were necessary to verify the claim based on Ms. Ahmad's EUO testimony. The Respondent requested the following verification:

1. Evidence of payments made by or on behalf of All Wellness pursuant to the lease agreements at the following locations, including copies of the front and back of canceled checks, to the extent not already provided: AT0011 (11/2013) a. 33-06 88th Street, Jackson Heights, NY 11372 for September 1, 2019 through April 2020; b. 409 Rockaway Avenue, Brooklyn, NY 11212 for November 1, 2019 through July 2020; c. 204-12 Hillside Avenue, Hollis, NY 11423 for March 15, 2020 through July 2020; GEICO acknowledges receipt of three lease agreements and copies of checks from August 2020 through October 2020. However, the checks provided do not cover the time-period referenced in GEICO's initial request and only contained images of the front, and not the back as originally requested. What All Wellness has provided does not comply with GEICO's initial request. GEICO renews its request for the remaining outstanding verification.

2. Copies of documents relating to the income and expenses of All Wellness, including but not limited to the opening/signatory authorization documents for the bank account, monthly bank statements, deposit records, electronic transfers and copies of all canceled checks (front and back) used on behalf of All Wellness for the period of 2019 through the present; GEICO acknowledges receipt of a letter from Bank of America to All Wellness. This letter is not, as asserted, a signatory card but merely provided All Wellness with instructions for direct deposit and the information needed to authorize withdrawals. What All Wellness has provided does not comply with GEICO's initial request. GEICO renews its request for the requested verification and addresses All Wellness objections below.

3. Copies of any payment directive or billing agreement entered into by, or made on behalf of, All Wellness and R.M.A. Billing & Consulting, Inc., including any invoices, checks or electronic transfers from 2019 to present, to the extent not already provided; GEICO acknowledges receipt of copies of the front of four checks to R.M.A. Billing & Consulting, Inc., dating from October 2020 to December 2020. However, what All Wellness has provided does not comply with GEICO's initial request. GEICO renews its request for the remaining verification, including the back images of the checks provided and the written agreement with R.M.A. Billing & Consulting, Inc. referenced on Page 96, Lines 8-10 of the EUO Transcript.

4. Copies of any documents relating to any collection and/or billing agreement between Ilya E. Parnas, P.C. and All Wellness; GEICO acknowledges All Wellness response regarding the lack of an actual written agreement with Ilya E. Parnas, P.C. However, what All Wellness has provided does not comply with GEICO's initial request as Ms. Ahmad testified to the existence of written reports from Ilya E. Parnas, P.C. Accordingly, GEICO renews its original request as the reports from Ilya E. Parnas, P.C. to All Wellness are directly related to any collection and/or billing agreement that may exist.

5. Copies of all quarterly payroll and corporate tax returns (IRS Form 941 and NYS Form 45-MN) filed from 2019 to present by or on behalf of All Wellness, as

well as all documents provided by Nida Ahmad, L.Ac. to her accountant Peter Palterman, to prepare the corporate tax returns, to the extent not already provided; GEICO acknowledges receipt of All Wellness 2020 Fourth Quarter payroll tax return. However, what All Wellness has provided does not comply with GEICO's initial request. GEICO renews its request for the remaining outstanding verification.

6. Copies of all IRS form 1099s, K-1s and/or W2s forms from All Wellness, including, but not limited to, any documentation regarding the employee status or relationship of any All Wellness employee from 2019 to present; GEICO acknowledges receipt of documents titled Payer Detail by Employee for 2019 and 2020. However, what All Wellness has provided does not comply with GEICO's initial request. GEICO renews its request for the remaining outstanding verification and addresses All Wellness objections below.

7. All Licenses for each and every licensed professional, including acupuncturists, rendering services on behalf of All Wellness from 2019 to present, to the extent not already provided, including Licenses for Howard Lee, Renata Plaut, Robert Matsch, Qian Ren, Paul Wong, Namhee Kim, Jeong Ah Seo, and Woojung Shin. GEICO acknowledges the receipt of Licenses for Dixu Gao, Li Hua Chen, Lyudmila Krupnova, Steven Michael Zore, Daejin Yang, and Wu Zhentao. However, Licenses for Howard Lee and Renata Plaut, referenced as employees during the EUO, were not provided, as well as the Licenses for the following employees who appear on the Payer Detail by Employee list provided by All Wellness: Robert Matsch, Qian Ren, Paul Wong, Namhee Kim, Jeong Ah Seo, and Woojung Shin.

Applicant's counsel responded by providing certain information and objecting to verification requests requesting pertaining to bank records and tax records.

The issue before me requires a balancing between the Respondent's right to request verification pursuant to 11 NYCRR § 65.15 (g) (1) (I); 2 (iii), and Applicant's rights under the Claims Practice Principles pursuant to 11 NYCRR 65-3.2. For the case at bar, the latter right infers an abuse of process utilizing the verification process by treating Applicant unfairly and intentionally delaying payment. Applicant's counsel argues that the Respondent has turned the verification process into an investigatory opportunity for delay and recalcitrance.

To begin with, I am not of the opinion that all requests for further verification are unrestrained. Other areas of the regulations and decisions by both the courts and arbitrators discuss the need for good cause or a reasonable basis to be shown to obtain further verification. The courts have held that the carrier is not permitted to use the verification process to obtain information concerning corporate structure or finances regarding the provider. See Dynamic Medical Imaging P.C. a/a/o v. State Farm Mut. Auto. Ins. Co., 29 Misc. 2d. 278, 2010 NY

Slip Op. 20285 (Dist. Ct., Nassau Co., J. Hirsh, July 15, 2010). I note recent decision where the court noted materials relating to a Mallela defense (discussed below) cannot be obtained as verification of the claim; an EUO cannot be scheduled for the purpose of inquiring into the corporate structure of the provider. Concourse Chiropractic, PLLC v. State Farm Mutual Ins. Co., 35 Misc.3d 1213(A), 2012 N.Y. Slip Op. 50676(U), (Dist. Ct. Nassau Co., Fred J. Hirsh, J., Apr. 16, 2012). I believe Applicant is correct in that at the very least, Respondent must demonstrate a fact or founded belief that the Applicant is a fraudulent corporation to allow a special circumstance to exist and thus entitle the Respondent to the Applicant's financial documents including corporate tax returns. Midborough Acupuncture P.C. v. State Farm Ins. Co., 21 Misc. 3d. 10, 12 (App. Term, 2d. Dept. 2008).

Additionally, permitting an insurer to obtain written documents such as tax returns, incorporation agreements or leases, regarding a potential fraudulent incorporation Mallela defense as part of the verification process defeats the stated policy and purpose of the No-fault law and carries with it the potential for abuse (Island Chiropractic Testing, P.C. v Nationwide Ins. Co., 35 Misc. 3d 1235, NY District Ct, 2012).

The record does not contain a basis for requesting the aforementioned financial, banking and contractual records. Respondent has submitted an affidavit by Barbara-Ann Chapman, a member of Respondent's Special Investigative Unit (SIU) in support of their position.

I find the affidavit to be accusatory and without any detailed factual information. The affidavit makes allegations and relies upon Applicant's transcript testimony as being suspected of fraudulent and/or inappropriate business activity. The primary premise of the affidavit speaks about fee splitting and predetermined medical protocols. Respondent argues that they have "strong concerns" regarding Applicant's business practices and relationships. However, Respondent does not have strong evidence to substantiate the accusations. If Respondent actually believes that Applicant engages in fraudulent activity, then it behooves Respondent to file a declaratory judgment and litigate the elements of the suspected fraud in a more appropriate forum.

I find that I am most persuaded by the analysis and findings of Justice Consuelo Mallafre Melendez in Arthur Ave. Med. Servs., PC v GEICO Ins. Co., 2021 NY Slip Op 21108, decided on April 20, 2021. Justice Mallafre Melendez found:

"Both the Mallela and Carothers courts stressed principles of expediency and good cause in investigations of fraudulent licensing and improper fee sharing

and acknowledged that abuse of the verification process may exist. At no time did the Court of Appeals state that carriers have unfettered authority in the extent of these investigations."

Respondent would have best been served in seeking a declaratory judgment to stay Applicant's claims, or if it felt that it had enough evidence, to pursue a case based on fraud and/or improper practices, and issued denials based on those grounds. It is the undersigned Arbitrator's position that verification sought goes beyond the purview of the No-fault reimbursement system.

Moreover, the purpose of the No-Fault Law "is not served when an insurer repeatedly request[s] the same verification from the same provider, especially in the situation where the material demanded has previously been provided or is readily obtainable from easily accessible public records." See, 33 Misc.3d 1236(A), 941 N.Y.S.2d 536 (Table), 2011 N.Y. Slip Op. 52255(U) at 3, 2011 WL 6355291 (Dist. Ct. Nassau Co., Fred J. Hirsh, J., Dec. 10, 2011). "A provider should not have to repeatedly provide documentation it has already provided unless the insurer can establish a reasonable basis and rational need for demanding this material anew." Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co., 33 Misc.3d 1236(A), 941 N.Y.S.2d 536 (Table), 2011 N.Y. Slip Op. 52255(U) at 3, 2011 WL 6355291 (Dist. Ct. Nassau Co., Fred J. Hirsh, J., Dec. 10, 2011).

It is undeniable that Respondent has requested the same information in different claims. Where a provider fails to respond or object to a repetitive verification demand, and the verification demanded is information not relevant to the claim, has previously been provided to the insurer by the claimant, can easily be obtained from free, publicly accessible sources, or seeks material that cannot be obtained through verification, the insurer cannot obtain judgment. Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co., 33 Misc.3d 1236(A), 941 N.Y.S.2d 536 (Table), 2011 N.Y. Slip Op. 52255(U), 2011 WL 6355291 (Dist. Ct. Nassau Co., Fred J. Hirsh, J., Dec. 10, 2011).

Accordingly, I find that Respondent was not entitled to the financial/business/tax records requested. Moreover, I find that Applicant substantially complied with Respondent's requests. Most importantly, I find that the Respondent violated the Claims Practice Principles by treating the Applicant as an adversary and by not seeking to resolve the claim amicably or promptly.

Therefore, Applicant is entitled to reimbursement. The only remaining issue to be determined is the dispute regarding the service known as cupping.

Respondent argues that the fees charged by Applicant, for the acupuncture services known as cupping, were in excess of those permitted under the Workers' Compensation Fee Schedule. Cupping works by reducing the pain in the body by creating a partial vacuum inside cups placed on the skin. Skin is drawn into the cup by a vacuum or by heat, blood stasis is formed, and localized healing takes place. It is mainly performed on the back because there are five meridians on the back. Cupping is mainly recommended for the treatment of pain.

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). See also, Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (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 Dept., per curiam, 2006).

If an insurer contests and reduces a medical provider's fees for medical services rendered, then such reduction must be based upon a medical doctor's peer review or medical analysis of the services rendered vis-à-vis the fees charged and a medical explanation regarding why the charges are best described by another CPT billing code.

Respondent relies on the affidavit by Steven Schram, a chiropractor and acupuncturist. The Schram affidavit states that in order to derive an appropriate value for each comparative procedures to other procedures for which a value is already established. To do this, Dr. Schram looked at the value of the work, which is termed the relative value unit (RVU). Dr. Schram describes cupping as a very simple procedure that requires a minimal amount of technical skill. Specifically, Dr. Schram contends that cupping would equate "between" an unattended hot pack and an attended ultra-sound. Dr. Schram states that there is little overhead associated with cupping as it requires very little in the way of supplies.

There still remains no formal guideline or uniformity as it relates to the fee for cupping before the promulgation of the new fee schedule in October 2020. My esteemed colleagues hold differing opinions on this issue. As such, each case

must be determined based on the evidence presented. Moreover, I am permitted to take judicial notice of the Workers' Compensation Fee Schedule. See Kingsbrook Jewish Medical Center v. Allstate Insurance Company, 61 A.D.3d 13, 20 (2nd Dept. 2009); 32 Misc.3d 144(A), 2011, LVOV Acupuncture, P.C. v. Geico Ins. Co., N.Y. Slip Op. 51721(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2011); Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 N.Y. Slip Op. 50040(U) (App. Term 1 Dept. 2011).

There is no analysis/comparison provided in Dr. Schram's affidavit between cupping and the comparative procedures presented by Dr. Schram. Dr. Schram failed to explain why cupping is similar to an unattended hot pack. Dr. Schram failed to explain why cupping is similar to an attended ultra-sound. Dr. Schram simply makes a blanket statement regarding their value and similarities.

I find that Respondent's fee schedule affidavit does not provide a basis for down coding the cupping treatment. Since no sufficient evidence is provided to substantiate these reductions, then Respondent cannot sustain its fee schedule defense. Limited to the evidence submitted, I find in favor Applicant and award further and continued reimbursement for the cupping treatment.

Applicant is entitled to reimbursement in the amount requested. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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
	All Wellness Acupuncture PC	07/01/20 - 07/14/20	\$373.56	Awarded: \$373.56
	All Wellness Acupuncture PC	07/16/20 - 07/30/20	\$720.00	Awarded: \$720.00
	All Wellness Acupuncture PC	07/16/20 - 07/30/20	\$445.28	Awarded: \$445.28
	All Wellness Acupuncture PC	08/05/20 - 08/05/20	\$26.41	Awarded: \$26.41
	All Wellness Acupuncture PC	08/05/20 - 08/17/20	\$630.00	Awarded: \$630.00
	All Wellness Acupuncture PC	08/05/20 - 08/17/20	\$389.62	Awarded: \$389.62
	All Wellness Acupuncture PC	08/18/20 - 08/31/20	\$540.00	Awarded: \$540.00
	All Wellness Acupuncture PC	09/21/20 - 09/21/20	\$26.41	Awarded: \$26.41
	All Wellness Acupuncture PC	08/18/20 - 08/31/20	\$333.96	Awarded: \$333.96
	All Wellness Acupuncture PC	09/10/20 - 09/21/20	\$540.00	Awarded: \$540.00

	All Wellness Acupuncture PC	09/02/20 - 09/09/20	\$270.00	Awarded: \$270.00
	All Wellness Acupuncture PC	09/02/20 - 09/21/20	\$500.94	Awarded: \$500.94
	All Wellness Acupuncture PC	09/23/20 - 09/30/20	\$360.00	Awarded: \$360.00
	All Wellness Acupuncture PC	09/23/20 - 09/30/20	\$222.64	Awarded: \$222.64
Total			\$5,378.82	Awarded: \$5,378.82

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/25/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the filing date for this case until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to no minimum and a maximum of \$1360.00.

- 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 NY

SS :

County of NASSAU

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

05/02/2023

(Dated)

Ben Feder

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:
5705a99cb37cc87821343ec0f97dcf63

Electronically Signed

Your name: Ben Feder
Signed on: 05/02/2023