

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Orthopedic Associates Of Dutchess County,  
PC  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

AAA Case No.	17-22-1258-3471
Applicant's File No.	N/A
Insurer's Claim File No.	194736686-05
NAIC No.	11851

**ARBITRATION AWARD**

I, Melissa Abraham-LoFurno, 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: AA

1. Hearing(s) held on 01/30/2023, 05/08/2023  
Declared closed by the arbitrator on 05/15/2023

Jeffrey Kimmel, Esq. from Law Offices of Jeffrey S. Kimmel participated virtually for the Applicant

Courtney McKeon, Esq. from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,400.00**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated to Prima Facie and Fee Schedule.

At the time of the hearing, Respondent conceded that Applicant is owed \$150.00 for DOS:10/28/20 as billed. Therefore, the aforementioned bill is not longer at issue.

3. Summary of Issues in Dispute

The within award is based upon this arbitrator's review of the record as well as oral argument at the time of the hearing of this matter.

The claimant in this case is a 46-year old female hereinafter "AA", who was involved in a motor vehicle accident that occurred on 06/02/19. Following the accident AA suffered injuries which resulted in the claimant seeking treatment. AA came under the care of Applicant for MLS laser therapy from 01/27/20-11/16/20. Upon receipt of the remaining bills at issue, Respondent issued requests for verification seeking: Relative Value Units (RVU) for the treatment at issue consistent in relativity with other RVUs in the Fee Schedule as well as any information concerning the nature and extent needed for the procedure. Having allegedly not received a sufficient response from Applicant, Respondent issued denials based on the 120 Day Rule.

ISSUE:

Whether Respondent's denials based on the 120 Day Rule can be sustained?

#### 4. Findings, Conclusions, and Basis Therefor

##### **120 DAY DENIAL**

As stated above, Respondent issued request for verifications seeking: Relative Value Units (RVU) for the treatment at issue consistent in relativity with other RVUs in the Fee Schedule as well as any information concerning the nature and extent needed for the procedure.

Applicant at the time of the hearing argues that Applicant supplied Respondent with sufficient responses to verification.

A review of Applicant's submission reveals copies of letters which look to be annexed to the various bills at issue indicating that (1) the session for the laser therapy last fifteen (15) minutes each; (2) that the CPT code used for these session is billed under 97039 which is a "BR" or by-report code and (3) that Applicant should be reimbursed \$150.00 for each session.

A prima facie case of entitlement to no-fault compensation is made out by submitting evidence that the prescribed statutory billing form has been mailed and received, and that the defendant failed to either pay or deny the claim within the requisite 30 day period. *Westchester Medical Center v. Lincoln General Insurance Company*, 60 AD 3d 1045, 877 NYS 2d 340 (2d Dept. 2009); *Westchester Medical Center v. Clarendon National Insurance Company*, 57 A.D. 3d 659, 816 NYS 2d 759 (2d

Dept. 2008). There is no doubt that respondent received the claim as it requested additional verification. I find that applicant has established its prima facie entitlement to benefits.

Effective April 1, 2013 11 NYCRR§ 65-3.5(o) was amended so that, "an applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. ***The insurer shall advise the applicant in a verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply... This subdivision shall apply, with respect to claims for medical services, to any treatment or service rendered on or after April 1, 2013.***" 11 NYCRR§ 65 - 3.8 (b) provides that, "[A]n insurer may issue a denial if, more than 120 days after the initial request for verification, the applicant has not submitted any such verification under the applicant control possession or written proof providing reasonable justification for the failure to comply, provided that the verification requested so advised the applicant as required in section 65 -3.5 (o) of this subpart.

Based on my review of the aforementioned, I find as a matter of fact that Respondent's denials of claim are sustained as Applicant failed to provide the requested and necessary RVU equivalent and/or similar RVU to the laser therapy at issue so as to properly allow Respondent to determine the reimbursement amount (if any) for the treatment at issue. I find those documentations provided by Applicant to be insufficient to be proper responses to Respondent's requests for verification. As the requested information was never provided to Respondent, I find that Respondent's denials based on the 120 Day Rule must be sustained.

**Accordingly, Applicant's claims are denied except for DOS:10/28/20 that is conceded by Respondent as owed to Applicant.**

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
	Orthopedic Associates Of Dutchess County, PC	01/27/20 - 01/27/20	\$150.00	Denied
	Orthopedic Associates Of Dutchess County, PC	01/30/20 - 01/30/20	\$150.00	Denied
	Orthopedic Associates Of Dutchess County, PC	02/03/20 - 02/03/20	\$150.00	Denied
	Orthopedic Associates Of Dutchess County, PC	02/06/20 - 02/06/20	\$150.00	Denied
	Orthopedic Associates Of Dutchess County, PC	02/10/20 - 02/10/20	\$150.00	Denied
	Orthopedic Associates Of Dutchess County, PC	02/14/20 - 02/14/20	\$150.00	Denied
	Orthopedic Associates Of Dutchess County, PC	10/20/20 - 10/20/20	\$150.00	Denied

	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>10/22/20 - 10/22/20</b>	<b>\$150.00</b>	<b>Denied</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>10/26/20 - 10/26/20</b>	<b>\$150.00</b>	<b>Denied</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>10/28/20 - 10/28/20</b>	<b>\$150.00</b>	<b>Awarded: \$150.00</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>11/02/20 - 11/02/20</b>	<b>\$150.00</b>	<b>Denied</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>11/04/20 - 11/04/20</b>	<b>\$150.00</b>	<b>Denied</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>11/06/20 - 11/06/20</b>	<b>\$150.00</b>	<b>Denied</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>11/10/20 - 11/10/20</b>	<b>\$150.00</b>	<b>Denied</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>11/12/20 - 11/12/20</b>	<b>\$150.00</b>	<b>Denied</b>
	<b>Orthopedic Associates Of Dutchess County, PC</b>	<b>11/16/20 - 11/16/20</b>	<b>\$150.00</b>	<b>Denied</b>
<b>Total</b>			<b>\$2,400.00</b>	<b>Awarded: \$150.00</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/15/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from the AR1 filing date at the rate of 2% per month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9 (c).

C. Attorney's Fees

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

Respondent shall pay the Applicant attorney's fees in accordance with 11 NYCRR 65-4.6(d).

- 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 Suffolk

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

06/07/2023  
(Dated)

Melissa Abraham-LoFurno

**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:**  
5320a8195990e95e993144b177a463a1

### **Electronically Signed**

Your name: Melissa Abraham-LoFurno  
Signed on: 06/07/2023