American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

J Sports Medicine PC (Applicant)	AAA Case No.	17-22-1279-9256
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	092022020260
	NAIC No.	Self-Insured
Federal Insurance Company (Respondent)		

ARBITRATION AWARD

I, Karen Fisher-Isaacs, 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 09/27/2023
   Declared closed by the arbitrator on 09/27/2023

   Rajesh Barua from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

   Perri Lembo from Law Office of Jason Tenenbaum, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$8,912.88**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant, by counsel, amended the amount of the claim to $3,648.85 acknowledging a payment of $5,264.08 that Respondent made.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute
   Applicant seeks reimbursement of charges for a lumbar percutaneous discectomy, nucleus pulposus ablation and annuloplasty with disc injection and radiographic interpretation performed on October 30, 2022, for Assignor, a 59-year old male, in connection with treating injuries following a June 12,

2022 motor vehicle accident. Respondent partially paid/ timely denied Applicant's billing based on the NYS Workers' Compensation fee schedule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the American Arbitration Association's ADR Center as of the date of the hearing in this matter and have considered all pertinent documents contained therein for the purpose of rendering this award.

Applicant seeks reimbursement in the amended amount of $3,648.85, the balance it claims it is owed for a lumbar percutaneous discectomy, nucleus pulposus ablation (CPT 62287), annuloplasty (CPT 225226-59, 22527-59) with disc injection and radiographic interpretation (CPT 62290-59 and 72295-26) performed on October 30, 2022 for Assignor, a 59 year old male, in connection with treating injuries sustained in a motor vehicle accident on June 12, 2022. Respondent partially paid/timely denied Applicant's claim based on the New York Workers' Compensation Fee Schedule.

As a threshold matter, I find that Applicant has established its prima facie case as Applicant has met the requirements enunciated in Ave T MPC Corp. v Auto One Ins. Co., 32 Misc 3d 128[A], 2011 NY Slip Op 51292[U] [App Term, 2d, 11th & 13th Jud Dists 2011]).

Respondent argued that Applicant's bill was properly reduced based on the fee schedule. She relied on Respondent's EOB prepared by Corvel.

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 Dep't, per curiam, 2006).

Notice is taken that Respondent reimbursed Applicant in full for code 22527 ($2,217.07) and reimbursed codes 22526 ($1,369.30) and 62287 ($1,431.02) at 50%. I find that Applicant was properly reimbursed for these three codes consistent with the multiple procedure rule and Applicant is not owed anything additional for codes 62287 and 22526.

Therefore, the only codes which are not at issue are codes 62290-59 and 72295-26.

Respondent did not reimburse anything for code 62290 stating only on its EOB that it is "not applicable with billed surgery codes." Respondent did not submit a coder's affidavit or any other expert evidence to support denying code 62290 outright. However, because this code is subject to the multiple procedure rule (Surgery Ground Rule 5), I am now awarding $195.26 for this code.

Respondent reimbursed $246.64 out of the $704.68 Applicant billed for radiological code 72295. Again, I don't find Respondent's EOB alone sufficient to support this reduction. I find that Applicant should have awrded $352.34 (50% of the $704.68 billed). I am now awarding an additional $105.70 for this code.

Accordingly, based on the arguments of counsel and consideration of all submissions, Applicant is awarded $300.96 in total satisfaction of its amended claim.

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	Amount Amended	Status
	J Sports Medicine PC	**10/30/22 - 10/30/22**	**$8,912.88**	**$3,684.85**	**Awarded: $300.96**
Total			**$8,912.88**		**Awarded: $300.96**

B. The insurer shall also compute and pay the applicant interest set forth below. 12/23/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the Applicant the amount of interest computed from the date offiling (noted above) of the AR-1, at a rate of 2% per month, simple, and ending with thedate of payment of the award subject to the provisions of 11 NYCRR 65-3.9(e).

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee, subject to a maximum fee of $1,360.00, 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 NJ
SS :
County of Bergen

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

09/28/2023
(Dated)

Karen Fisher-Isaacs

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:
8e70187362071af89c875ceef61b8f00

Electronically Signed

Your name: Karen Fisher-Isaacs
Signed on: 09/28/2023