

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Fifth Avenue Surgery Center LLC
(Applicant)

- and -

Nationwide General Insurance Company
(Respondent)

AAA Case No. 17-23-1281-4913

Applicant's File No. SS-235878

Insurer's Claim File No. 305108-GK

NAIC No. 23760

ARBITRATION AWARD

I, Joshua Adler, 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 09/26/2023
Declared closed by the arbitrator on 09/26/2023

J. Padruco from Samandarov & Associates, P.C. participated virtually for the Applicant

L. Wolkow from Law Offices of Brian Rayhill participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,940.74**, was AMENDED and permitted by the arbitrator at the oral hearing.

As amended in conformance with its fee coder's analysis, applicant seeks \$4890.74.

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

3. Summary of Issues in Dispute

The EIP claimed injuries arising from a 3/07/20 MVA.

Applicant, a surgery center, seeks the balance of "facility fees" it claims is due in connection with right shoulder surgery performed on 1/21/21.

The parties debate "fee."

4. Findings, Conclusions, and Basis Therefor

onedriveEIP: female, born October 1973, initials M.T.

I have reviewed the MODRIA file maintained by the AAA. The findings set forth below are based on documents in MODRIA and arguments made at the hearing.

The EIP claimed injuries arising from a 3/07/20 MVA.

Applicant, a surgery center, seeks the balance of "facility fees" it claims is due in connection with right shoulder surgery performed on 1/21/21.

The parties debate "fee."

Respondent's certified fee coder, Russell Arnold, opined that respondent paid in full, paying only for CPT code 29821 at \$5677.77.

All agree that one of the billed codes, A4649, is not entitled to reimbursement, but applicant's certified fee coder, Aaron J. Peretta, Esq., CPC, opined that remaining codes 29823, 29825, and 29826 should have been reimbursed at 50% of their respective EAPG values and that code 20610 should have been paid at 100% of its EAPG value (see Peretta Affirmation at paragraphs 10, 13).

I find respondent's coder's analysis (Mr. Arnold) to be more persuasive (see, for example, paragraphs 11-15 of the Arnold Fee Analysis). In this regard, I reject applicant's coder's (Peretta) protestations, including, inter alia, that respondent's fee coder applied "the wrong fee schedule to applicant's bill" (Peretta Affirmation at paragraphs 24-28); that the Arnold Fee Analysis failed because it did not include medical evidence that applicant's use of modifier 59 was inappropriate (Peretta Affirmation at paragraph 36); and, that Fee Coder Arnold improperly relied on an extrinsic and unauthorized source to reach his conclusion that code 20610 was not reimbursable (Peretta Affirmation at paragraphs 46-50).

Accordingly, I sustain the denial.

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

10/20/2023

(Dated)

Joshua Adler

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:
c2cd7a0bba9dba967d3e8c0d6ce032a4

Electronically Signed

Your name: Joshua Adler
Signed on: 10/20/2023