

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

North Coast Physical Therapy & Rehab
(Applicant)

- and -

Church Mutual Insurance Company
(Respondent)

AAA Case No. 17-23-1295-0581

Applicant's File No. NCP041023003

Insurer's Claim File No. 1485372

NAIC No.

ARBITRATION AWARD

I, Lori Ehrlich, 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: Claimant

1. Hearing(s) held on 09/28/2023, 10/31/2023
Declared closed by the arbitrator on 10/31/2023

Chris Economou, Esq. from Economou & Economou PC participated virtually for the Applicant

No appearance from Church Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$773.05**, was AMENDED and permitted by the arbitrator at the oral hearing.

Amended to \$215.82

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

3. Summary of Issues in Dispute

In dispute is Applicant's claim in the sum of \$215.82 for physical therapy services rendered to Applicant's assignor, I.V., said claims arising from an automobile accident on August 5, 2022.

Respondent has denied this claim based on fee schedule and the issue presented is whether the denials are properly sustained.

The parties appeared via Zoom.

I have reviewed the documents entered into the ADR by October 31, 2023.

4. Findings, Conclusions, and Basis Therefor

The services at issue were provided to the Claimant from November 7, 2022 to December 2, 2022. Applicant has set forth a prima facie case for each of the claims at issue by the submission of a completed health claim form documenting the fact and amount of the loss sustained (*Amaze Medical Supply v. Eagle Ins. Co.*, 2 misc. 3d 128A, 784NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11 Jud. Dusts.].

At the outset I note that a representative for Respondent failed to appear at the initial hearing of this case which was scheduled for September 28, 2023. The case was adjourned based on Respondent's nonappearance, and Respondent notified of the new date, however, Respondent failed to appear at the continued hearing.

Respondent partially reimbursed Applicant for the services billed and denied the balance based on fee schedule. When raising a fee schedule defense, Respondent has the burden to come forward with competent evidentiary proof to support its fee schedule defenses. *Robert Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co.*, 13 Misc. 3d. 172(Civ. Ct. Kings Co. 2006). When a Respondent fails to demonstrate by competent evidentiary proof that an Applicant's claims were in excess of the appropriate fee schedules, Respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. *Continental Medical, P.C. v. Travels Indemnity Co.*, 11 Misc. 3rd 145A (App. Term 1st Dept. 2006).

Applicant amended the amount in dispute to \$215.82, acknowledge a prior payment of \$357.18 by Respondent, and limiting each of the remaining five dates of services to \$114.60 to comport with the fee schedule limitation of twelve units per day. Respondent has failed to submit proof to establish that Applicant or another provider was reimbursed any additional treatment for the dates of service at issue. Accordingly, Applicant is awarded \$215.82.

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
	North Coast Physical Therapy & Rehab	11/07/22 - 12/02/22	\$773.05	\$215.82	Awarded: \$215.82
Total			\$773.05		Awarded: \$215.82

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/23/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Insurer shall pay interest at the rate of 2% per month, simple (not compounded), on a pro rata basis using a 30-day month. Interest shall be computed from April 23, 2023 to the date of payment.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00. However, for all arbitration requests filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 Westchester

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

10/31/2023
(Dated)

Lori Ehrlich

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:
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Electronically Signed

Your name: Lori Ehrlich
Signed on: 10/31/2023