

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mid Rockaway Ave Medical PC  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

AAA Case No. 17-23-1286-1618

Applicant's File No. 133728

Insurer's Claim File No. 21-6928731

NAIC No. 21735

**ARBITRATION AWARD**

I, Farheen Sultan, 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 11/01/2023  
Declared closed by the arbitrator on 11/01/2023

Robert Cippitelli, Esq. from Law Offices of Eitan Dagan (Woodhaven) 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, **\$1,181.58**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established its prima facie case of entitlement to No-Fault benefits and that Respondent's NF-10/Denial of Claim forms were timely issued.

3. Summary of Issues in Dispute

The Assignor, G.G., a 38 year old male, was involved in a motor vehicle accident on 10/7/21. At issue in this case is \$1,181.58 for outcome assessment testing and an office

visit on dates of service 10/22/21-10/18/22. Respondent denied the claims based on medical necessity and fee schedule defenses. The issues to be determined are whether the Respondent has established its medical necessity and fee schedule defenses.

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

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

At the outset it is noted that Respondent denied the claim for date of service 10/18/22 based on an IME. However, Respondent failed to submit the subject IME report in support of its medical necessity defense. **Accordingly, the claim for this date of service is granted.**

Respondent denied the remaining claims based on an a fee schedule defense.

11 NYCRR 65-3.8 (g) (1) (ii); (2) provides that, effective April 1, 2013, "no payment shall be due for claimed medical services under any circumstances . . . for those claimed medical service fees that exceed the charges permissible pursuant to Insurance Law sections 5108 (a) and (b) and the regulations promulgated thereunder for services rendered by medical providers."

Therefore, a carrier is not required to establish that it had timely denied the claims in order to preserve its fee schedule defense. See Oleg's Acupuncture, P.C. v Hereford Ins. Co., 58 Misc 3d 151[A], \*1 [App Term, 2nd Dept., 2018].

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 more than 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).

Here, the provider billed outcome assessment testing using code 99358 on the same dates that the provider performed evaluations using code 99215. In support of its defense Respondent submits the 2021 CPT Professional Edition which informs that code 99358 should not be reported on the same date of service as 99215. As such, I find that Respondent has sufficiently demonstrated that Applicant is not entitled to reimbursement for CPT 99358 in this matter.

**Accordingly, Applicant's remaining claims are denied.**

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
	Mid Rockaway Ave Medical PC	10/22/21 - 10/18/22	\$1,181.58	Awarded: \$61.10
Total			\$1,181.58	Awarded: \$61.10

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/10/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

When more than 1 bill is in submission, I find that the interest accrual date is the date arbitration was filed. Thus, in this matter I find the date that interest shall accrue from is the date the Applicant requested arbitration in this matter. See, 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

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). Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.6. The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(d). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360." *Id.*

- 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 Queens

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

11/06/2023  
(Dated)

Farheen Sultan

### **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:**  
faf014b0e2f7d4b4b591230322745c98

### **Electronically Signed**

Your name: Farheen Sultan  
Signed on: 11/06/2023