

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Proactive Medical Care PLLC (Applicant)	AAA Case No.	17-22-1275-8802
- and -	Applicant's File No.	n/a
	Insurer's Claim File No.	0680144094 RRL
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Gerry Wendrovsky, 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 11/15/2023
Declared closed by the arbitrator on 11/15/2023

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

Rosemary Krupp from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$292.92**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The EIP, AJ, a 39-year-old male was involved in a motor vehicle accident on 8/6/22. At issue is \$292.92 for an evaluation performed on 8/10/22. The question presented is whether respondent's fee schedule defense is sustained.

4. Findings, Conclusions, and Basis Therefor

This case has been 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. The hearing was conducted via Zoom. There were no witnesses. I have reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon, which is in full disposition of the issues before me.

An applicant establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D. 3d 742 (2nd Dept.,2004). The applicant has submitted sufficient credible evidence to establish its prima facie case.

I have taken judicial notice of the New York State Workers' Compensation fee schedule. *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D. 3d 13, 20 (2nd Dept.,2009).

Respondent had the burden of coming 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. 2006). In the absence of such proof, respondent's defense cannot be sustained. *Continental Medical, P.C. v. Travelers Indem. Co.*, 11 Misc. 3d. 145(A) (App Term 2006).

Applicant billed under cpt code 99354; I note it had billed and was reimbursed for an office visit (code 99204), in addition to the surgical/radiology codes (20553, 76942).

The denial asserted with respect to code 99354 in pertinent part:

".... This procedure/service is considered to be part of the global surgical package which includes all normal follow-up care for the period indicated in the New York Workers' Compensation Medical Fee Schedule. (Surgical Ground Rule 1)"

I note Surgical Ground Rule (GR) 1B states in relevant part, the *"listed values for all surgical procedures include the surgery, local infiltration, digital or regional block, and/or topical anesthesia when used and the normal follow-up care indicated"*

At the hearing, the applicant argued that in the absence of an affidavit of a certified professional coder (CPC), respondent had not presented a sufficient defense.

I have reviewed the medical report in the submission.

Upon considerable review, as it would appear other arbitrators in addressing the question presented, have issued varying decisions on different grounds, as I have expressed in similar matters, it is appropriate and rational to require a qualified interpretation of the fee schedule; in the absence of a CPC affidavit or expert's review, a fee schedule defense cannot be established. *Continental, supra*.

Conclusion

The applicant is awarded the sum of \$292.92.

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
	Proactive Medical Care PLLC	08/10/22 - 08/10/22	\$292.92	Awarded: \$292.92
Total			\$292.92	Awarded: \$292.92

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/22/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Simple interest on the above awarded amount shall be computed and paid at a rate of 2% per month, commencing on the date the claim was filed in arbitration and ending with the date of payment of the award.

C. Attorney's Fees

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

Respondent shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6.

- 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 NY

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

11/21/2023
(Dated)

Gerry Wendrovsky

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:
8e4bd67bfa39569d3f588376f8ef9335

Electronically Signed

Your name: Gerry Wendrovsky
Signed on: 11/21/2023