

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Landa Spine Center
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-23-1288-5765

Applicant's File No. 23-001272

Insurer's Claim File No. 32-24Q2-19S

NAIC No. 25178

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 11/22/2023
Declared closed by the arbitrator on 11/22/2023

Robert Bott from The Licatesi Law Group, LLP participated virtually for the Applicant

Jason Egielski from James F. Butler & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$149,939.67**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended its claim to \$2,063.38, asserting same was in accordance with the relevant fee schedule.

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

3. Summary of Issues in Dispute

The EIP, MC, a 32-year-old female was involved in a motor vehicle accident on 8/29/21. At issue is \$149,939.67 for right shoulder surgery performed on 11/28/22. The question presented is the reimbursement due applicant.

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.

At the hearing, the applicant amended its claim to \$2,063.38, asserting same was in accordance with the relevant fee schedule.

The applicant establishes its prima facie entitlement to reimbursement 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.

Fee Schedule

I have taken judicial notice of the New York State and New Jersey Workers' Compensation fee schedules. *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), 2006 NY Slip Op 50841(U) (App Term 2006).

Initially, I observe the 33rd Amendment, 11 NYCRR 68 (Insurance Regulation 83) effective 1/23/18, may apply, as the EIP was a New York resident, and the bill set forth the services were rendered in New Jersey; the regulation, *inter alia*, requires that where applicable, the lesser of the New York or New Jersey fee schedule should be the sum reimbursed.

As ascertained at the hearing, the amended claim was limited to the remaining reimbursement (50%) of the cpt codes at issue, 29823-59 (\$1,032.95) and 29825-59 (\$1,030.43), the rates of reimbursement as set forth in the New York Fee Schedule.

Respondent

Respondent uploaded an affidavit of a certified professional coder (CPC), Mercy Acuna, dated 7/6/23, averring in pertinent part:

".... (NY Fee Schedule)

29827-RT	\$41,000.00	Arthroscopy, shoulder, surgical; with rotator cuff repair	29827	\$2,348.08
29824-RT	\$26,000.00	Arthroscopy, shoulder, surgical; distal claviclectomy including distal articular surface (Mumford procedure)	29824-51	\$652.52
29823-59, Rt	\$30,500.00	Arthroscopy, knee, surgical; debridement; extensive	29823-51	\$1,032.95
29825-59, Rt	\$27,500.00	Arthroscopy, shoulder, surgical; with lysis and resection of adhesions, with or without manipulation	29825-51	\$1,030.43
29826-RT	\$30,500.00	Arthroscopy, shoulder, surgical; decompression of subacromial space with partial acromioplasty, with or without coracoacromial release.	29826	\$496.32

.... Per the NY Workers' Compensation Medical Fee Schedule, Surgery Ground Rules # 5: Multiple or Bilateral Procedures: When multiple procedures, unrelated to the major procedure and adding significant time or complexity, **are provided at the same operative session, payment is for the procedure with the highest allowance plus half of the lesser procedures******It is appropriate to designate multiple procedures that are rendered on the same date by separate entries. **This can be reported by using the multiple procedure modifier 51.** ****Some related procedures supplement the primary procedure or provide additional treatment or diagnostic information.

These services may be reported in addition to the primary procedure. Do not add modifier 51 if these services are noted as (+) add-on or modifier 51 exempt services.

Payment per the NY Fee schedule would be as follows:

CPT code 29823 is subject to the Surgery Ground Rules # 5 therefore payment is at 50% of the fee allowance (RVU = 8.20 x \$251.94 = \$2,065.91) @ 50% = \$1,032.95

CPT code 29825 is subject to the Surgery Ground Rules # 5 therefore payment is at 50% of the fee allowance (RVU = 8.18 x \$251.94 = \$2,060.87) @ 50% = \$1,030.43

As per the 33rd Amendment, the allowable amount= \$5,560.30 (lowest amount). The provider was previously paid the total amount of \$5,560.33. No additional reimbursement due"

Discussion

Upon review, as I find respondent's CPC affidavit to be essentially coherent and sufficient to sustain respondent's fee schedule defense, the burden shifted to applicant to submit proof that the charges involved a different interpretation of the applicable fee schedule or of an inadvertent miscalculation or error. *Cornell Medical, P.C. v. Mercury Cas. Co.*, 24 Misc. 3d 58 (App Term 2009).

Other than the argument set forth hereinabove, applicant did not submit any substantive evidence in opposition to the fee schedule defense, or that the CPC affidavit's calculations were premised upon faulty methodology/research. *See, Custis v. Travelers Prop. Cas. Ins. Co.*, 27 Misc. 3d 928 (Dist. Ct. 2010).

Applicant's claim is 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 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 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.

11/28/2023

(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:
a29f5034b576a58594afd04746c9adf0

Electronically Signed

Your name: Gerry Wendrovsky
Signed on: 11/28/2023