

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1284-5215

Applicant's File No. M22-709843

Insurer's Claim File No. 0674753439 2SF

NAIC No. 29688

ARBITRATION AWARD

I, Elyse Balzer, 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: DF

1. Hearing(s) held on 11/01/2023
Declared closed by the arbitrator on 11/01/2023

James Errera, Esq from Shapiro & Associates, P.C. participated virtually for the Applicant

Lauren Piacentini, Esq. from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$950.92**, 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

This arbitration seeks full payment for ultrasound guidance performed in conjunction with trigger point injections performed on 11/1/22 on the 28-year-old female eligible injured person DF for injuries sustained in a motor vehicle accident on 6/24/22.

The issue whether respondent properly paid for the ultrasonic guidance of 12/6/22 based on the fee schedule.

The parties agreed that the above issue was the only issue in contention.

Respondent did not raise any issue of exhaustion.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted via Zoom, as all arbitration hearings have been conducted telephonically since March 15, 2020 and via Zoom since February 2021 due to the COVID-19 pandemic.

4. Findings, Conclusions, and Basis Therefor

On 11/1/22, physician assistant A. Kopach, of applicant's medical practice, performed trigger point injections on four sites and DF's lumbar spine. An office visit was conducted on the same day.

Respondent paid for the office visit and trigger point injections with the physician assistant rate.

Respondent paid for 1 unit of CPT 76942 at the physician physician rate of \$231.36.

Respondent also paid for the medication billed under J1094.

The remaining 3 units of CPT 76942 billed for ultrasonic guidance was denied pursuant to the fee schedule.

To support its billing, applicant presented the affidavit of out-of-state expert Michael Miscoe who owns Practice Masters, Inc.. This affidavit has been submitted in prior arbitrations and is not specific to this claim.

I have previously considered Mr. Miscoe's affidavit and its interpretation of the New York State following schedule and consider his opinion to be inaccurate and incorrect regarding the use and billing of CPT 76942.

The only issue herein is whether respondent properly paid for the ultrasonic guidance of 11/1/22 based on the fee schedule.

This exact same issue was previously considered by me in another case brought by applicant-provider herein for the same services provided to DF. See, AAA Case Number 17-22-1268-8566, Atlantic Medical & Diagnostic PC aao DF & Allstate, award 9/6/23.

In that prior case, I considered the proof presented by both parties, which included an affidavit of Michael Miscoe presented by applicant and a fee coding affidavit presented by respondent.

In that prior case I wrote:

On 7/5/22, at applicant's facility physician assistant Aleksandr Kopach performed an outpatient visit, and injections under ultrasound, on DF.

Applicant charged \$1,458.26 for the 7/5/22 services.

At the hearing, applicant amended the claim for 7/5/22 to \$520.56.

On 8/16/22, Mr. Kopach again performed an office visit and injections under ultrasound on DF.

Applicant charged \$1,680.22 for the services of 8/16/22.

At the hearing, applicant amended the claim for 8/16/22 to \$520.56.

At the hearing, applicant acknowledged that respondent had paid for the office visit and injections on each date of service but had only paid for one unit of CPT 76942 for ultrasonic guidance.

Applicant had billed multiple units of CPT 76942 for each date of service.

Applicant presented an affidavit, of Michael Miscoe, the President and Senior Forensic Coding and Compliance Auditor for Initial Masters, Inc.

The affidavit is dated 7/13/22 and is approximately 28 pages long.

Respondent presented the affidavit, dated 12/27/22, of certified professional coder Caroline Mallory, CPC.

Both experts analyzed applicant's bills.

Ms. Mallory correctly pointed out that the services were performed by a physician assistant, which under the new fee schedule, authorized a reduction in billing.

Mr. Miscoe proposed that the definition of CPT 76942 meant that this code is reportable for a single needle placement.

My reading of the fee schedule does not comport with the interpretation proposed by Mr. Misco.

In this case, only one area of the body was treated on each date of service, and, therefore, only one unit for CPT 76942 should have been billed and should have been paid. The other units of CPT 76942 billed by applicant were excessive and inappropriate.

Since respondent has shown that it already paid for one unit of CPT 76942 for each date of service, I find that no further reimbursement for the remaining units is due.

Applicant's claim is denied.

Based on the proof presented herein and my interpretation of the applicable fee schedule, I find similarly that respondent properly paid applicant for the ultrasonic guidance performed on 11/1/22.

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 Westchester

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

11/30/2023

(Dated)

Elyse Balzer

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:
ac8db62b2e617881283bd18bee9818e1

Electronically Signed

Your name: Elyse Balzer
Signed on: 11/30/2023