

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Evan Donin, NP  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-23-1307-1283

Applicant's File No. NA

Insurer's Claim File No. 32-35K3-48G

NAIC No. 25178

**ARBITRATION AWARD**

I, Marcie Glasser, 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 11/27/2023  
Declared closed by the arbitrator on 11/27/2023

Marc Schwartz, Esq . from Marc L. Schwartz P.C. participated virtually for the  
Applicant

Jasmine Cornett, Esq. from James F. Butler & Associates participated virtually for the  
Respondent

2. The amount claimed in the Arbitration Request, **\$675.82**, 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 stems from treatment of a 54 year-old female who sustained injuries in a motor vehicle accident on June 13, 2022. The dispute arises from a claim for a psychiatric diagnostic evaluation billed pursuant to code 90792. Respondent denied and reimbursed the claim in part on the ground that Applicant billed in excess of the fee schedule. The issue is whether Respondent's fee schedule defense can be sustained for date of service January 18, 2023.

#### 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. I reviewed the documents contained in the electronic file for both parties and make a decision in reliance thereon.

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. E.g., *Robert Physical Therapy PC v. State Farm Mut. Auto Ins. Co.*, 13 Misc. 3d 172, 822 N.Y.S.2d 378 (Civ. Ct., Kings County 2006). If Respondent fails to demonstrate by competent evidentiary proof that Applicant's claims were in excess of the appropriate fee schedules, Respondent's defense of noncompliance with the appropriate fee schedules cannot be sustained. *See, Cont. Med. PC v. Travelers Indem. Co.*, 11 Misc. 3d 145A, 819 N.Y.S.2d 847 (App. Term, 1st Dep't 2006, per curiam).

Applicant billed \$921.57 pursuant to code 90792 for psychiatric diagnostic evaluation (3 units) performed by a Nurse Practitioner. Respondent issued reimbursement in the amount of \$245.75 for 1 unit.

In support of its fee schedule defense, Respondent has submitted an affidavit of Mercy Acuna, RN, CPC signed and sworn on September 8, 2023.

Applicant's counsel argued that the coder affidavit lacks probative value as Ms. Acuna's CPC certification is noted to have expired in September 2022; the date of service is noted in the affidavit as January 25, 2023 rather than January 18, 2023; and Ms. Acuna referenced the Medical fee schedule; however, Applicant's counsel argued that the Behavioral Health fee schedule is applicable.

Respondent's counsel countered that the date of service is correctly noted as January 18, 2023 as the records reviewed and the body of the affidavit had a typographical error; Ms. Acuna remains credentialed; and Ms. Acuna appropriately referenced the fee schedule.

I find that the coder affidavit sufficiently refers to date of service January 18, 2023, and that in the coder affidavit sworn on September 8, 2023, Ms. Acuna attested that she remains a Registered Nurse licensed in New York and a Certified Professional Coder, credentialed with American Academy of Professional Coders.

In any event, I take judicial notice of the Worker's Compensation Fee Schedule ("fee schedule"). *Kingsbrook Jewish Medical Center v. Allstate Insurance Company*, 61 AD 3d 13 (2d Dept. 2009); *LVOV Acupuncture PC v. Geico Insurance Company*, 32 Misc. 3d 144 (A) (App. Term 2d, 11th and 13th Jud. Dists. 2011). *Natural Acupuncture Health PC v. Praetorian Insurance Company*, 30 Misc. 3d 132 (A), 2011 NY Slip op 50040 (U), (App. Term 1st Dept. 2011). I also take judicial notice of the CPT Assistant. *See, Matter of Global Liberty Insurance Company v. McMahon*, 2019 NY Slip Op 03692 (1st Dept., 5/9/19).

In accordance with 34<sup>th</sup> Amendment to Regulation 83, The New York State Worker's Compensation fee schedule allows Physicians Assistants and Nurse Practitioners to bill for services in their own name. Ground rule 11 provides:

*"Authorized Nurse Practitioners who render care and treatment in accordance with their scope of practice under State Education Law and Physician Assistants who render treatment and care for ongoing temporary disability in accordance with the Workers' Compensation Law, shall report and bill using their individual authorization numbers and bills shall be payable at 80% of the fee available to physicians for such treatment code."*

Applicant billed 3 units of CPT code 90792. CPT code 90792 provides for "psychiatric diagnostic evaluation with medical services." CPT code 90792 has an RVU of 27.75 and the conversion factor is \$11.07. Therefore, no-fault reimbursement is \$307.19. As Applicant is a Nurse Practitioner, Applicant was reimbursed 80% of the physicians fee in the amount of \$245.75. Respondent issued payment for 1 unit of diagnostic evaluation.

Applicant billed for 3 units of CPT code 90792. The evidentiary record contains a diagnostic evaluation for the Claimant with one encounter on date of service January 18, 2023. Moreover, CPT 90792 is not a time-based code. The diagnostic evaluation is not coded by duration of the visit or time.

CPT guidelines state that CPT code 90792 may be reported once per day and not on the same day as an evaluation and management service performed by the same individual for the same patient. There is no reimbursement for any additional units.

Ground Rule 8 of the Behavioral Health fee schedule provides that, "for patients that require psychiatric services (90785 - 90899) as well as health and behavior assessment/intervention (96150 - 96155), report the predominant service performed. Do not report codes 96150 - 96155 in addition to codes 90785 - 90899 on the same date."

I find that there is no valid ground to award multiple units for a single encounter diagnostic evaluation. Respondent issued reimbursement for 1 unit of CPT code 90792 at the Nurse Practitioner rate of 80% of the physician fee. The total allowable amount in accordance with the fee schedule is \$245.75, which was the amount reimbursed to Applicant. Respondent's denial is sustained.

Accordingly, in light of the foregoing, based on arguments of counsel and after thorough review and consideration of all submissions, I find in favor of Respondent and deny the claim in its entirety.

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 FL

SS :

County of Palm Beach

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

12/01/2023  
(Dated)

Marcie Glasser

**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:**  
8b6cb0fb3286373a92cf9d2c7e4ec915

### **Electronically Signed**

Your name: Marcie Glasser  
Signed on: 12/01/2023