

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Goal Physical Therapy P.C
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-23-1293-0691

Applicant's File No. 136676

Insurer's Claim File No. 32-42D4-31T

NAIC No. 25178

ARBITRATION AWARD

I, Diane Flood Taylor, 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 12/07/2023
Declared closed by the arbitrator on 12/07/2023

Edilaine D'Arce from Law Offices of Eitan Dagan (Woodhaven) 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, **\$475.00**, 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

Whether Applicant established entitlement to No-Fault insurance compensation for activity limitation measurement, which Respondent denied on fee schedule grounds.

Applicant is seeking reimbursement in the amended amount of \$114.60 for activity limitation measurement (ALM) in connection with the management of injuries sustained by the Assignor, JC, a then 26-year-old eligible injured person who, on 11/1/22, was involved in a collision with the insured motor vehicle.

Respondent denied Applicant's bill premised on fee schedule grounds.

The decision below is based upon a review of the documents that have been submitted electronically, as well as the arguments of counsel and/or representatives appearing via video conference on behalf of the parties.

4. Findings, Conclusions, and Basis Therefor

In dispute in this arbitration is a bill for ALM conducted on 12/16/22.

Respondent raised no issue or argument concerning Applicant's submission of proof of claim.

Applicant established its prima facie case in this matter by submission of the subject bills evidencing the amount charged for these services. See, Viviane Etienne Med. Care v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501 (2015); Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564 (2nd Dept., 2004).

Once an Applicant has established its prima facie case, the burden shifts to the insurer to establish that it timely and properly denied the claim, and the basis of its denial.

Fee Schedule Defense

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., NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006.

An insurance carrier's timely asserted defense that the bills submitted were not properly No-Fault rated or that the fees charged were in excess of the Workers' Compensation fee schedule is sufficient, if proven, to justify a reduction in payment or denial of a claim. See East Coast Acupuncture, P.C. v. New York Cent. Mut. Ins., 2008 NY Slip Op 50344(U) (App. Term 2d Dept., Feb. 21, 2008).

It is well established that a medical provider must limit its charges to those permitted by approved fee schedules. An insurer who raises a fee schedule defense will prevail if it demonstrates that it was correct in its application of the fee schedule. See Jesa Medical Supply, Inc. v. Geico Ins. Co., 25 Misc. 3d 1098 (2009).

Respondent denied the claim premised on fee schedule grounds.

Evidence

Respondent submitted the affidavit of Mercy Acuna, RN, BSN, CPC, in support of its position. After a comprehensive review of the medical records, inter alia, copies of computerized muscle test reports, the bills submitted by Applicant, and the applicable fee schedules, Ms. Acuna indicated that the proper rate of reimbursement is \$0.

In her analysis, Ms. Acuna stated, in relevant part:
"SUMMARY:

This review is to determine the allowable amount per the fee schedule.

NOTE: Per the NY Workers' Compensation Occupational and Physical Therapy Fee Schedule, Introduction and General Guidelines (paragraph 5) 'this edition of the Official New York Workers' Compensation Acupuncture, Occupational and Physical Therapy Fee Schedule uses CPT procedure codes, modifiers, and descriptions.

Please refer to the CPT book for an explanation of coding rules and regulations not listed in this schedule'.

NOTE: The CPT Assistant is used as a reference in the review process as appropriate. The CPT Assistant is published by AMA (American Medical Association) which also publishes the CPT Book. The CPT Assistant is an in-depth information for coding particular services and/or procedures performed by providers. The CPT Assistant is the widely used coding supplement utilized by coders and providers. The CPT Assistant is indicated in the CPT Book as a reference for proper coding.

In the Introduction section of the CPT Book, page xii and xiii: Instructions for Use of the CPT Codebook:

*** 'Instructions, typically included as parenthetical notes with selected codes, indicate that a code should not be reported with another code or codes. These instructions are intended to prevent errors of significant probability and are not all inclusive. For example, the code with such instructions may be a component of another code and therefore it would be incorrect to report both codes even when the component service is performed. These instructions are not intended as a listing of all possible code combinations that are appropriately reported. When reporting codes for services provided, it is important to assure the accuracy and quality of coding through verification of the intent of the code by use of the related guidelines, parenthetical instructions, and coding resources, including CPT Assistant and other publications resulting from collaborative efforts of the American Medical Association with the medical specialty societies'.

The provider of service is a self-employed Physical Therapist.

The location of service is Region IV (zip of service = 11379)

The conversion factor for Physical Medicine = \$9.55

Date of service 12/16/2022 (EOR dated 2/10/2023) amount billed = \$475.00:

The provider billed CPT code 97039 'Unlisted modality (specify type and time if constant attendance)'.

NOTE: CPT code 97039 is used for physical therapy modalities that don't have specific codes listed in the fee schedule or in the CPT book. This code cannot be used for testing or measurement which is what the provider performed and billing for."

Ms. Acuna stated, in conclusion, "In my judgment, the service provided is most accurately described by CPT code 99750, which has a "0" RVU in the new fee schedule that became effective as of 10/1/2020."

Pursuant to 11 NYCRR 65-4.5 (o) (Regulation 68-D) the arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations. See Bd. of Education, et. al. v. Bellmore-Merrick, 39 N.Y. 2d. 167 (1976).

"Although an arbitration panel may not overtly disregard the law, arbitrators are not strictly tethered to substantive and procedural laws and may do justice as they see it, provided that they do not violate a strong public policy, do not exceed a specifically enumerated limitation on their power and their decisions are not totally irrational [citations omitted]." See Matter of Solow Building Co., LLC v. Morgan Guarantee Trust Co. of New York, 6 A.D.3d 356, 356, 776 N.Y.S.2d 547, 548 (1st Dept. 2004).

Findings

I find Respondent's evidence, the affidavit of professional coder Ms. Acuna, sufficient to support its denial on fee schedule grounds; therefore, the claim is denied.

In sum, after reviewing the entire record and after careful consideration of the parties' oral arguments, I find in favor of Respondent. Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for No -Fault benefits presently before this Arbitrator.

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

12/08/2023
(Dated)

Diane Flood Taylor

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:
3d7fd4e48286398beb30a49679264512

Electronically Signed

Your name: Diane Flood Taylor
Signed on: 12/08/2023