American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RES Physical Medicine & Rehab Services (Applicant)	AAA Case No.	17-23-1298-8692
	Applicant's File No.	23-45375
- and -	Insurer's Claim File No.	23-5201217
	NAIC No.	24279
Progressive Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Michael Korshin, 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 12/29/2023
   Declared closed by the arbitrator on 12/29/2023

   Nicole Jones from The Morris Law Firm, P.C. participated virtually for the Applicant

   Lance Faustin from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,101.33**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant amended the amount sought at the hearing to $2,102.21 to reflect prior payments.

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

3. Summary of Issues in Dispute

   This arbitration arises out of several bills in the total original amount of $3,101.33 for various services provided from 1/19/23 to 2/8/23. Applicant amended the amount sought at the hearing to $2,102.21 to reflect prior payments. The Assignor, a 21-year-old

female, was involved in a motor vehicle accident on 11/17/22. The issue in dispute is whether Respondent has established a defense to payment based upon the applicable fee schedule.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in MODRIA. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in MODRIA maintained by the American Arbitration Association. This decision is based upon the documents reviewed as well as the arguments made by the parties' representatives at the arbitration hearing.

This arbitration arises out of several bills in the total original amount of $3,101.33 for various services provided from 1/19/23 to 2/8/23. Applicant amended the amount sought at the hearing to $2,102.21 to reflect prior payments. The Assignor, a 21-year-old female, was involved in a motor vehicle accident on 11/17/22. The issue in dispute is whether Respondent has established a defense to payment based upon the applicable fee schedule.

The submission of Respondent's NF-10s, which admitted the receipt of the relevant claim forms, established prima facie that the insurer received the claim referenced therein as having been submitted by the provider and that the insurer did not pay the claim. *See*, New York Diagnostic Med. Care, P.C. v. Geico Ins. Co., 2013 NY Slip Op 23360 (App Term 2d, 11th & 13th Jud Dists. Oct. 8, 2013); Lopes v. Liberty Mutual Ins. Co., 24 Misc.3d 127(A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009).

Accordingly, I find that Applicant has established its prima facie case of entitlement to No-Fault benefits.

With respect to the bill for date of service 1/25/23 in the amount of $323.18, Respondent paid $270.68 towards the bill, leaving an unpaid amount of $52.50. Respondent withdrew the bill at the hearing as having been paid properly per fee schedule.

With respect to the bill for date of service 1/19/23 in the amount of $447.86, Respondent paid $207.13 towards the bill, leaving an unpaid amount of $240.73. The services were performed by a PA and reimbursement was correctly adjusted to 80% of the fee schedule amount. With respect to CPT code 80377, Respondent properly denied the code based upon the code descriptor and reimbursement for CPT code 80307. Applicant conceded at the hearing that CPT code 99244 was improperly down coded - Applicant conceded **$77.79** is still owed.

With respect to the bill for date of service 1/25/23 in the amount of $468.11, Respondent paid $131.42 towards the bill, leaving an unpaid amount of $336.69. Respondent submitted a bill utilizing CPT code 74699. I have previously found that the appropriate reimbursement is $131.42. Respondent relies on a coder affidavit. The services were

billed under CPT code 76499, a "by report code". Respondent maintains that the comparable service would be CPT codes 76120. I agree with the Respondent's analysis and reject Applicant's fee evidence which does not adequately establish a comparable code. Therefore, no further reimbursement is required.

With respect to the bill for date of service 1/25/23 in the amount of $700.00, Respondent paid $0 towards the bill. Respondent submitted a bill utilizing CPT code 74696. I have previously found that the appropriate reimbursement is $131.42. Respondent has not sufficiently established a basis for denial of this bill. An additional reduction is appropriate for Ground Rule 3b - Applicant will be awarded **$98.57** for this bill - this was also conceded by Applicant.

With respect to the bill for date of service 1/25/23 in the amount of $468.11, Respondent paid $98.57 towards the bill, leaving an unpaid amount of $369.54. Respondent submitted a bill utilizing CPT code 74699. I have previously found that the appropriate reimbursement is $131.42. The services were billed under CPT code 76499, a "by report code". Respondent maintains that the comparable service would be CPT codes 76120. I agree with the Respondent's analysis and reject Applicant's fee evidence which does not adequately establish a comparable code. Respondent correctly reduced payment further based upon Ground Rule 3b. Therefore, no further reimbursement is required.

With respect to the bill for date of service 2/8/23 in the amount of $225.96, Respondent paid $107.40 towards the bill, leaving an unpaid amount of $118.56. The services were performed by a PA and reimbursement was correctly adjusted to 80% of the fee schedule amount. With respect to CPT code 80377, Respondent properly denied the code based upon the code descriptor and reimbursement for CPT code 80307. Therefore, no further reimbursement is required.

With respect to the bill for date of service 2/8/23 in the amount of $468.11, Respondent paid $131.42 towards the bill, leaving an unpaid amount of $336.69.Respondent submitted a bill utilizing CPT code 74699. I have previously found that the appropriate reimbursement is $131.42. The services were billed under CPT code 76499, a "by report code". Respondent maintains that the comparable service would be CPT codes 76120. I agree with the Respondent's analysis and reject Applicant's fee evidence which does not adequately establish a comparable code. Therefore, no further reimbursement is required.

Accordingly, an award will be entered in favor of Applicant in the amount of $176.36.

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**	**Amount Amended**	**Status**
	RES Physical Medicine & Rehab Services	**01/19/23 - 01/19/23**	**$447.86**	**$240.73**	**Awarded: $77.79**
	RES Physical Medicine & Rehab Services	**01/25/23 - 01/25/23**	**$1,959.40**	**$1,406.23**	**Awarded: $98.57**
	RES Physical Medicine & Rehab Services	**02/08/23 - 02/08/23**	**$694.07**	**$455.25**	**Denied**
Total			**$3,101.33**		**Awarded: $176.36**

B. The insurer shall also compute and pay the applicant interest set forth below. 05/09/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D).

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.6. The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.6(d). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of $1,360." Id.

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 Nassau

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

01/02/2024
(Dated)

Michael Korshin

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:
e7fe2cd87de94c160356d9f986d60e4a

Electronically Signed

Your name: Michael Korshin
Signed on: 01/02/2024