

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Jongwhan Cha, LAC
(Applicant)

- and -

Adirondack Insurance Exchange
(Respondent)

AAA Case No.	17-24-1334-8215
Applicant's File No.	NF-28046-1498535
Insurer's Claim File No.	220608843
NAIC No.	12583

ARBITRATION AWARD

I, Inez Beyrer, 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: the patient

1. Hearing(s) held on 06/25/2024
Declared closed by the arbitrator on 06/25/2024

Edward Fajardo, Esq. from Sanders Grossman Aronova PLLC participated virtually for the Applicant

Allison Lindsey, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$200.76**, 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

The patient was a 45-year-old woman who claimed injury from a motor vehicle accident on September 2, 2022. Applicant seeks reimbursement for acupuncture treatment rendered on October 28, 2023, and November 18, 2023. Respondent argued that that it paid the bill according to its view of the fee schedule and that no further money is owed.

The issue is whether Respondent may establish its fee schedule defense.

4. Findings, Conclusions, and Basis Therefor

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., 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). See also, Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (Civil Ct, Kings Co. 2006). If Respondent fails to demonstrate by competent evidentiary proof that an 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, Continental Medical PC v. Travelers Indemnity Co., 11 Misc. 3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dept., per curiam, 2006).

Respondent submitted the fee code analysis of Stephanie A. Brown, a Certified Professional Coder and Certified Professional Medical Auditor. Ms. Brown examined the bills and pointed out that Ground Rule 6 provides "Moxibustion and other complementary integrative medicine techniques are often combined with acupuncture. No additional reimbursement will be provided for acupuncture combined with moxibustion or other similar adjunctive procedures." Ground Rule 7 "A licensed acupuncturist may only use CPT® codes contained in the Acupuncture Fee Schedule for billing." Under both of these ground rules, codes 97026, 97124, 97799 and 99202 are not reportable. Ms. Brown also goes through the reported codes and the total fee schedule amount was \$136.61, which was already paid.

Applicant has not submitted any coder affidavit to support its billing.

After considering the submissions and the arguments of the parties, I find that Respondent has established its fee schedule defense, by using the analysis of Ms. Brown, who has cogently explained how she arrived at her conclusion. The claim is denied.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

- #### 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 Nassau

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

07/24/2024
(Dated)

Inez Beyrer

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:
c109c14b1e1c5ef59bd2945e4e39881c

Electronically Signed

Your name: Inez Beyrer
Signed on: 07/24/2024