American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

KHH Medical Care PC (Applicant)	AAA Case No.	17-23-1302-4698
	Applicant's File No.	BT23-222485
- and -	Insurer's Claim File No.	52-40P3-37R
	NAIC No.	43796
State Farm Mutual Automobile Insurance Company (Respondent)		

ARBITRATION AWARD

I, Victoria Thomas, 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 07/02/2024
   Declared closed by the arbitrator on 07/02/2024

   Sabine Sciarrotto from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

   Joseph Licatta from Rossillo & Licata LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$4,801.08**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The Assignor amended the claim to $4,068.97 per fee schedule and prior payments.

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

3. Summary of Issues in Dispute

   Did Respondent prove its fee schedule defense?

   Assignor 'AF' was involved in a motor vehicle accident on 10/15/22. Applicant billed for continuous interoperative monitoring and nerve testing with DOS 1/19/23. Respondent partially denied the claim because it exceeded the fee schedule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the file regarding this matter maintained by the AAA in the eCenter. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim, by the submission of a completed NF-3 form documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Fee Schedule

The New York Worker's Compensation Fee Schedule (WCFS) is given judicial notice and is applied accordingly. See, *Kingsbrook Jewish Hospital v. Allstate*, 61 AD3d 13, 20 (2nd Dept. 2009). When raising a fee schedule defense, Respondent has the burden to come forward with competent evidentiary proof to support its fee schedule defenses. *Robert Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co*., 13 Misc. 3d. 172 (Civ. Ct. Kings Co. 2006). When a Respondent fails to demonstrate by competent evidentiary proof that an Applicant's claim was more than the appropriate fee schedules, Respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. *Continental Medical, P.C. v. Travels Indemnity Co.*, 11 Misc. 3rd 145A (App. Term 1st Dept. 2006).

Applicant billed the following for DOS 1/19/23:

CPT Code 95941; neurophysiology monitoring $ 5,240.00

CPT Code 95955 26; EEG, nonintercranial surgery $ 336.97

CPT Code 95938; Somatosensory Evoked Potential $ 683.79

CPT Code95937 26; Neuromuscular Junction Testing $ 295.79

CPT Code 95870 26; Needle EMG $ 374.39

Respondent reimbursed the following:

CPT Code 95941; neurophysiology monitoring $ 589.84

CPT Code 95955 26; EEG, nonintercranial surgery $ 320.12

CPT Code 95938; Somatosensory Evoked Potential $ 683.79

CPT Code 95937 26; Neuromuscular Junction Testing $ 236.63

CPT Code 95870 26; Needle EMG $ 299.51

Respondent submitted the affidavit of CPC Beth Seidman who indicated the following:

CPT Code 95941:

CPT 95940 would be the most similar CPT code in relative value to 95941 because of the following descriptions:

95940 - Continuous intraoperative neurophysiology monitoring in the operating room, one on one monitoring requiring personal attendance, each 15 minutes (List separately in addition to code for primary procedure)

95941 - Continuous intraoperative neurophysiology monitoring, from outside the operating room (remote or nearby) or for monitoring of more than one case while in the operating room, per hour (List separately in addition to code for primary procedure)

95940 is reported per 15 minutes, and 95941 is reported per hour. There was a total of two hours of profession time conducted (8-time units)

Assignee's fee for two units of CPT 95941 is calculated by multiplying the 6.66 RVU x 11.07 conversion factor = $73.73 x 8 (time units) = $589.84.

CPT Code 95955 26:

11.07 x 30.44 = $336.97 @ 95% PC/TC Split = $320.12

CPT Code 95928:

Modifier 26 should be appended.

11.07 x 61.77 = $683.79; PC/TC Split 15% = $102.57

Code 95937 26:

11.07 x 13.36 = $147.90 @80% PC/TC Split of 80/20 = $236.63

Code 95870 26:

11.07 x 16.91 = $187.19 @80% PC/TC Split of 80/20 = $299.51

Applicant submitted the affidavit of Natalie Alfonso, CPC who indicated the following:

95941, being a BR code, should not be considered interchangeable with or identical to code 95940 simply based on the few similarities between the codes.

95941 was intentionally listed as a BR code with different time measurements and different description and should be reimbursed separately from code 95940.

General Ground Rule 3 applies and the following information should be considered when analyzing a "by report" code: "the nature, extent, and need for the procedure or service, the time, the skill and equipment necessary, etc." In this case, each code involves different levels of skill (one being professional and one being technical) different time measurements and Ms. Seidman does not specifically explain these or code 95940 should be used as a basis for code 95941.

Given Code 95941 was intentionally listed as a BR code with different time measurements and different description, then it is reasonable to conclude that Code 95941 should be reimbursed separately from code 95940.

Ground Rule 3 also indicates that "the physician shall establish a relative value unit (RVU) consistent in relativity with other relative value units shown in the schedule." Dr. Hassan establishes an RVU of 236.68. Multiplying this RVU by a Region IV Medicine Conversion Factor of $11.07 yields $2,620.05 per unit.

The provider's charge for code 95941 is consistent with the prevailing fee. The Medical Fees Directory published by Context 4 Healthcare and Fee Analyzer set forth the following UCR figures for code 95941:

	75th Percentile	**90th Percentile**
Context 4 Healthcare (2020)	$2,446.00	$4,075.00
Fee Analyzer (2020-2021)	$2,600.00	$2,600.00
Fee Analyzer (2021-2022)	$4,483.96	$6,053.33

Fee Analyzer (2022-2023)	$5,999.99	$6,400.00

Upon review of the documentary evidence, clinical records, and arguments of both sides, I find that Applicant sufficiently rebutted Respondent's fee schedule audit. Ms. Alfonso's analysis is detailed and comprehensive, and, as such, I am persuaded by it.

Therefore, Applicant's claims are granted.

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**
	KHH Medical Care PC	**01/19/23 - 01/19/23**	**$4,801.08**	**$4,068.97**	**Awarded: $4,068.97**
Total			**$4,801.08**		**Awarded: $4,068.97**

B. The insurer shall also compute and pay the applicant interest set forth below. 06/06/2023 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 §65-4.5(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, Victoria Thomas, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

07/28/2024
(Dated)

Victoria Thomas

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:
de56f9d21ef5bde037889d423d6d51a7

Electronically Signed

Your name: Victoria Thomas
Signed on: 07/28/2024