

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Conrad F Cean MD, PLLC  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

AAA Case No. 17-23-1287-4585

Applicant's File No.

Insurer's Claim File No. 212746516

NAIC No. 32786

**ARBITRATION AWARD**

I, Vincent Gerardi, 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: Injured Party

1. Hearing(s) held on 06/28/2024  
Declared closed by the arbitrator on 06/28/2024

Mark Schwartz, Esq. from Cean Owens Law Group PLLC participated virtually for the Applicant

Crystal Abreu, Esq. from Law Offices of Perry & Frankson participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,183.19**, 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 case arises from a motor vehicle accident that occurred on 11/30/21. The eligible injured party was the driver in a motor vehicle. The issue in dispute is the denial of claim for lumbar facet block injections based upon the New York State Workers' Compensation Board Fee Schedule. The respondent's denial was timely denied.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center as of the date of the Hearing and entered in to the ADR Center, and have considered the oral arguments of the parties. Initially, according to the First Amendment to Regulation 68-D 11NYCRR 65-4.5, the Arbitrator shall be the judge of the relevance and materiality of the evidence offered that the Arbitrator deems relevant to making an Award that is consistent with Insurance Law and Insurance Department Regulations.

This case arises from a motor vehicle accident that occurred on 11/30/21. The eligible injured party was a forty-three-year-old male. The injured party's initial chief complaints were headaches, and injuries to the neck, right-shoulder, midback, and lower-back. There were decreased ranges-of-motion in the cervical, and lumbar, spines as well as the right-shoulder. The injured party started a treatment plan. The injured party had lumbar facet joint injections performed on 4/6/22 as well as an epidurography and trigger-point injections with ultrasonic guidance. A review of the medical records reflects that the injured party to date has received right-shoulder surgery (5/5/22), physical therapy, chiropractic care, acupuncture treatment, examinations, evaluations, consultations; psychological/ orthopedic/ pain management; injections; facet-block (3/23/22, 3/30/22, 4/6/22), MRI studies; cervical/ lumbar/ right-shoulder, pharmaceuticals, and durable medical equipment. The issue before me is the reimbursement of claim for the lumbar facet joint injections, an epidurography, and trigger-point injections with ultrasonic guidance performed on 4/6/22.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursement for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

It is well settled that an applicant for no-fault benefits establishes its prima facie entitlement to payment by proving that it submitted a claim, set forth the fact and the amount of the loss sustained, and that payment of no-fault benefits were overdue (see Insurance Law 5106(a), *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D. 3d 742, 774 N.Y.S. 2d 564, 2004 N.Y. App. Div. LEXIS 3597 (2nd Dept. 2004), *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128(A), 2003 N.Y. Slip Op. 51701(U) (App Term 2nd & 11th Jud Dists). A "facially valid claim" is presented where it sets forth the name of the patient, date of accident, date of services, description of services rendered and the charges for those services (see *Vinings Spinal Diagnostic P.C. v. Liberty Mutual Insurance Company*, 186 Misc. 2d 287, 717 N.Y.S. 2d 466 (1st Dist. Ct. Nass. Co.). The applicant has adjusted its claim to \$1,561.32.

The respondent has offered the Affidavit of Sarah Harder, C.P.C. dated 3/15/23. Ms. Harder stated that the services provided are listed in the New Jersey Physicians & ASC Facility Regulation and Fee Schedule. The applicant billed CPT code: 64493 (X2), CPT code: 64494 (X2), CPT code: 64495 (X2), CPT code: 77003-59, CPT code: 72275-59 (X2), CPT code: 20553-59 (X3), and CPT code: 76942-59. The services were provided in Hackensack, New Jersey. Ms. Harder went on to state that the highest valued procedure is reimbursed at 100% of the eligible charge and additional procedures are reimbursed at 50% of the eligible charges, modifier -59 is used to identify separate procedures, CPT code: 20553 is reported only once per session, and CPT code: 77003 is

an inclusive component of CPT codes: 64490 to 64495. Ms. Harder calculated the individual codes and concluded that the provider was entitled to \$1,914.10 pursuant to the New Jersey Fee Schedule and Regulations. Pursuant to the New York State Workers' Compensation Board Fee Schedule, Surgery Ground Rule #5 would apply to the applicant's bill. When multiple procedures are provided at the same operative session, payment is for the procedure with the highest allowance plus half of the lesser procedures. Pursuant to Radiology Ground Rule #3, the charge shall be the greatest fee plus 75% of the total of the lesser fees. Ms. Harder calculated the individual codes and concluded the provider was entitled to \$1,561.32 pursuant to the New York State Workers' Compensation Board Fee Schedule. Since the New York State Workers' Compensation Board Fee Schedule calculation is the lesser of the two calculations, based upon the 33rd Amendment to 11 NYCRR 68 (Insurance Regulation 83), that fee would apply. I am persuaded by the respondent-coder's calculations that \$1,561.32 is the proper reimbursement pursuant to the 33rd Amendment to 11 NYCRR 68 (Insurance Regulation 83) of the fee schedule.

Accordingly, the applicant's claim is granted in the amount of \$1,561.32.

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	Status
	Conrad F Cean MD, PLLC	04/06/22 - 04/06/22	\$2,183.19	Awarded: \$1,561.32

<b>Total</b>	<b>\$2,183.19</b>	<b>Awarded: \$1,561.32</b>
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- B. The insurer shall also compute and pay the applicant interest set forth below. 02/20/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

For the award claim of \$1,561.32 for services rendered, interest is to accrue from the date of filing.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d) or as this matter was filed after February 4th, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d). This amendment takes in to account that the maximum attorney fee has been raised from \$850.00 to \$1,360.00.

- 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, Vincent Gerardi, 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)

Vincent Gerardi

**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:**  
9c13682db8b1a44ab8ca330de859986e

### Electronically Signed

Your name: Vincent Gerardi  
Signed on: 07/28/2024