

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NYC Medical & Neurological Offices P.C.
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-23-1316-1129

Applicant's File No. 3076415

Insurer's Claim File No. 32-39R4-68M

NAIC No. 25178

ARBITRATION AWARD

I, Kent Benziger, 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: R.B.

1. Hearing(s) held on 07/01/2024
Declared closed by the arbitrator on 07/01/2024

Jessica Buscarino, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Joseph Licata, Esq. from Rossillo & Licata LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$951.59**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant has amended the amount in dispute to \$859.83 as the \$91.76 claimed for the June 20, 2023 date of service is withdrawn as paid, and Applicant has adjusted the amount in dispute for the February 14, 2023 date of treatment.

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

3. Summary of Issues in Dispute

On October 26, 2022, the Assignor/Eligible Injured Party, a 62-year-old male, was involved in a motor vehicle accident. In dispute is treatment on February 14, 2023 by Applicant NYC Medical & Neurological Offices, P.C. that included an evaluation and

extensive testing including computerized dynamic posturography. The Applicant billed \$2,333.87, and the Respondent reimbursed \$1,474.04 for the treatment with an additional \$7.87 paid in interest based on a late denial. The Respondent has submitted an affidavit from Aderonke Adesheila, a certified coder in defense of its fee schedule reimbursement. The Applicant has submitted no proof in rebuttal. Separately, Applicant's has provided computations - which have not been rebutted by the Respondent - that the proper amount of interest based on the late payment would total \$35.38, and, therefore, an additional \$27.51 would be due as well as an attorneys' fees on that amount.

4. Findings, Conclusions, and Basis Therefor

On October 26, 2022, the Assignor/Eligible Injured Party, a 62-year-old male, was involved in a motor vehicle accident.

In dispute is treatment on February 14, 2023 by Applicant NYC Medical & Neurological Offices, P.C. His complaints included unsteadiness, photophobia, phonophobia, blurred vision and mood changes. Following an evaluation, the extensive testing included computerized dynamic posturography. The Applicant billed \$2,333.87 for the evaluation and the testing.

Partial Payment. The Respondent received the claim on March 6, 2023. The NF-10 lists no date for final verification requested and that final verification was received on April 12, 2023. Through an NF-10 dated May 16, 2023, the Carrier issued partial payment of \$1,474.04. As will be discussed, the actual check totaled \$1,481.91 which included \$7.87 for interest based on the late payment. The stated basis of the partial payment included the following:

CPT 92540: Basic vestibular evaluation, includes spontaneous nystagmus test with eccentric gaze nystagmus, with recording, positional nystagmus test, minimum of 4 positions, with recording, optokinetic nystagmus test, bidirectional foveal and peripheral stimulation, with records, and oscillating tracking test, with recoding Per CPT Assistant Archives dated May 2011, page 10: Vestibular Function Test code 92541, 92545, 92546, and 92548 are reported only once per encounter and are not reported per eye or peer axis rotation.

Respondent's Certified Coder. The Respondent has submitted an affidavit from Aderonke Adesheila, a certified coder. For the February 14, 2023 date of service, she found that the proper reimbursement totaled \$1,385.52, and that Carrier overpaid on the claim by \$88.52. Ms. Adesheila's computations include reductions for the following:

Only one unit of CPT code 92540 (Basic Vestibular evaluation) is permitted

No reimbursement should be permitted for CPT codes 92541 92452, 92544 and 92545 based on the following:

CPT guidelines state that for CPT code 92540 (Basic vestibular evaluation, includes spontaneous nystagmus test with eccentric gaze fixation nystagmus, with recording, positional nystagmus test, minimum of 4 positions, with recording, optokinetic nystagmus test, bidirectional foveal and peripheral stimulation, with recording, and oscillating tracking test, with recording):

CPT 92546, (Sinusoidal vertical axis rotational testing) CPT 92547 (use of vertical electrodes) CPT 92538 (caloric vestibular test) and CPT 92588 (Distortion produce evoked otoacoustic emissions/evaluation) are not permitted to be reported in multiple units

Analysis. Pursuant to the Fourth Amendment effective April 1, 2013 to 11 NYCRR 65-3.8(g)(1), the Applicant's fees cannot exceed the charges permitted pursuant to the Insurance Law 5108 which would incorporate the Workers Compensation Fee Schedule. If there is a dispute that requires an application or interpretation of the fee schedule, the Respondent has the burden to come forward with competent evidentiary proof to support its defenses. . Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co, 13 Misc.3d 172 (Civil Ct, Kings Co. 2006). Once a Carrier has established that the amounts billed were in excess of the fee schedule, the burden shifts to the provider to show that establish a different interpretation, miscalculation or error. Cornell Medical P.C. v. Mercury Casualty Co., 24 Misc. 3d 58, (App Term 2d, 11th & 13 Dist. 2009). The Applicant has failed to rebut the affidavit of Ms. Adesheila, a certified coder. No further reimbursement is due as to the amount in dispute.

Interest. Both parties acknowledge that the Carrier's payment for the February 14, 2023 date of service was not timely made within 30 days. The Respondent reimbursed additional interest of \$7.87. However, Applicant has provided computations - which are not rebutted by the Respondent - that the proper total of interest based on the late payment would be \$35.38, and therefore an additional \$27.51 is due.

Attorneys' Fees. Pursuant to 11 NYCRR 65-3.10, 11 NYCRR 65-4.6, Applicant is awarded attorneys' fees of 20 percent of the total award of \$27.51 for the additional late interest payment. Applicant is awarded attorneys' fees of \$5.50.

APPLICANT'S CLAIM IS DENIED BASED ON FEE SCHEDULE. HOWEVER, BASED ON A LATE PAYMENT, APPLICANT IS AWARDED ADDITIONAL INTEREST OF \$27.51 AND ATTORNEYS' FEES OF \$5.50.

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 interest only

A. Attorney's Fees

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

Attorneys' Fees. Pursuant to 11 NYCRR 65-3.10, 11 NYCRR 65-4.6, Applicant is awarded attorneys' fees of 20 percent of the total award of \$27.51 for the additional late interest payment. Applicant is awarded attorneys' fees of \$5.50.

- B. 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 Orange

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

07/30/2024
(Dated)

Kent Benziger

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:
ba4289d6c691d1d7ae17ca4bfbfd673d

Electronically Signed

Your name: Kent Benziger
Signed on: 07/30/2024