

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Titan Diagnostic Imaging Services, Inc
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1307-5436

Applicant's File No. 159989

Insurer's Claim File No. 0697742229

NAIC No. 29688

ARBITRATION AWARD

I, Robyn McAllister, 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 07/30/2024
Declared closed by the arbitrator on 07/30/2024

Dmitry Joffe, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Julie Jassem, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,201.78**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant withdrew with prejudice its claim for the second bill as properly paid per agreement. The new amount claimed is \$955.72.

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

3. Summary of Issues in Dispute

Whether Respondent properly denied Applicant's claim for performing ultrasounds of the spine and joints for Assignor (ED), a 47 year-old male, in connection with treatment of injuries sustained in a motor vehicle accident on December 30, 2022, based on the

Workers' Compensation Fee Schedule and whether Applicant is entitled to reimbursement for no-fault benefits where it is not licensed professional corporation.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$955.72 for performing the technical component of ultrasounds of the spine and joints on April 5, 2023 for Assignor (ED), a 47 year-old male, in connection with treatment of injuries sustained in a motor vehicle accident on December 30, 2022. Respondent timely denied Applicant's claim based on the Workers' Compensation Fee Schedule. Respondent further asserted that Applicant is not entitled to reimbursement for no-fault benefits since it is not licensed professional corporation

This decision is based on the oral arguments of counsel or other representative at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim based on the Fee Schedule. Applicant submitted two bills for date of service 4/5/23. The bill in the amount of \$1246.57 for ultrasound of the cervical vertebral joints and bilateral trapezius was negotiated by Mitchell coding with Applicant's owner and paid by Respondent at the negotiated rate of \$997.26. That portion of the claim has been withdrawn with prejudice.

Applicant also billed for ultrasounds of the Lumbar vertebral joints with bilateral SI joints under CPT codes 76800-TC in the amount of \$177.94 and 76881-TC in the amount of \$194.55 and 76881 (four units) in the amount of \$582.72 for a total of \$955.72. Respondent denied this bill in its entirety and submitted an affidavit by Stephanie Brown, CPC to support its denial.

In any event, Respondent asserted that Applicant was not entitled to any reimbursement since Applicant is not a licensed medical provider in the State of New York and is not entitled to reimbursement for No-Fault benefits." I agree.

In support of its defense, Respondent submitted a general affidavit by Jeffrey Futoran, CPC, numerous arbitration awards on this issue and supporting exhibits. After reviewing the evidence submitted, I am persuaded by Respondent's defense.

For example, I was persuaded by Arbitrator Yantsos' award in *Titan Diagnostic Imaging Services, Inc v. Progressive Casualty Insurance Company*, 17-23-1302-1612, wherein she stated:

Regulation 65-3.16(12) provides that a "provider of health care services is not eligible for reimbursement under Section 5102(a) of the Insurance Law if the provider fails to meet any applicable NYS or local licensing requirement necessary to perform such(1) service in New York, or meet any applicable licensing requirement necessary to perform such service in any other state in which such service is performed.

With limited exceptions, a general business corporation may not provide professional services to the public, have employees who offer professional services to the public; hold itself as offering professional services, or share profits or split fees with licensed professionals.

The Applicant provider is named "Titan Diagnostic Imaging Services, Inc." The Applicant corporation by identifying itself as an "Inc." shows it is a Domestic business Corporation, and not a professional medical corporation, and as such is not licensed to perform medical services.

It is further noted that the individual performing the service has no license number indicated on the Health Insurance Form, and his title of "RCS" presumably stands for "Registered Cardiac Sonographer" There is no licensure issued for Registered Cardiac Sonographers in New York. Even if the individual performing these medical services were licensed or permitted under the law to perform such services, under the supervision or not under supervision of a medical doctor, the Business Corporation for whom he is employed, and who is billing for these services as the medical provider, may not seek reimbursement for medical services performed as it is not a professional medical corporation and as such, it is not a licensed medical provider. .

The services provided hereunder, i.e, ultrasound studies are medical services and they are being performed by a general business corporation. Only a professional corporation can offer professional services in New York State. A General Business Corporation or LLC cannot offer professional medical services.

If there are licensed people working for this general business corporation and wish to conduct these medical services, they must organize as a professional corporation-or PLLC.

Similarly, in *Titan Diagnostic Imaging Services, Inc v. Nationwide Insurance Company*, 17-23-1282-5257, Arbitrator Stathopoulos stated:

Respondent denied the disputed services asserting that the Applicant is not a Professional Corporation and cannot render professional services or the "technical component" of a professional service. Respondent argues that the Applicant is a New York State Corporation, owned by an individual, Anthony Palmeri, that does not possess any professional licenses and accordingly cannot bill for health services, including the technical component of a health service, under New York's no-fault laws.

In support of this defense, Respondent submits an affidavit from Linda Arnold, a claims specialist with the Respondent who investigates medical providers to verify they are valid corporations and/or businesses entitled to receive no-fault reimbursements. Ms. Arnold then references relevant portions of the insurance law (5102(a)) and no-fault regulations (65-3.16(a)) as well as an FAQ from the Department of Financial Services and contends that a technical component of a "medical" service cannot be performed by an unlicensed individual and "any other professional health service" is limited to those services that are required to be licensed by the State of New York. Ms. Arnold then notes that there is no requirement to be licensed to perform ultrasounds in New York and thus it is not reimbursable unless billed by a qualified provider, i.e., a medical professional, Professional Corporation (PC) or Professional Limited Liability Company (PLLC). Ms. Arnold then attests that the Applicant is neither a PC or PLLC, and Mr. Palmeri does not possess any professional license therefore Applicant is not permitted to render a bill for any professional service or the technical component of a professional service. Respondent also submits recent arbitration decisions that have upheld this licensing defense against this Applicant. (See, AAA Case #'s 172212663600 and 172112037941).

Applicant's counsel contends that Respondent is attempting to advance this "novel" argument to avoid payment of services that are clearly reimbursable under the fee schedule. Applicant's counsel argues that as long as the individual who performed the professional component of the ultrasounds is licensed, the underlying technical component of the service should be reimbursed.

Decision

*Based on a review of the evidence submitted and the arguments of the parties, I find Respondent's defense has merit. It is undisputed that the Applicant is neither a PC or PLLC, and that the owner of the Applicant, as well as the technician who rendered the technical component of ultrasounds does not possess any professional licenses to render "necessary expenses", or any "other professional health services" as mandated by Insurance Law 5102. Moreover, the prohibition of unlicensed individuals/entities to receive reimbursement under New York State's no-fault system was reaffirmed in *State Farm Mut. Auto. Ins. Co. v. Mallela*, 4 N.Y.3d 313 (2015), where the Court of Appeals*

held that the failure to comply with New York State's licensing laws renders a provider ineligible to receive no-fault benefits.

This issue was cogently summarized by Arbitrator Susan Mandiberg in AAA Case number 172112037907 wherein she stated:

"The instant matter/billing is governed by New York State Regulation 68A, Section 65-3.16(a)(12) which states as follows: "a provider of healthcare services is not eligible for reimbursement under section 5102 (a)(1) of the Insurance Law if the provider fails to meet any applicable New York State or local licensing requirements necessary to perform such services in New York or meet any applicable licensing requirement necessary to perform such services in any other state in which such service is performed". Therefore, only "properly owned and licensed professional medical corporations may bill and seek recovery from a no-fault insurance carrier. There is no right to No-Fault benefits with the provider is not properly incorporated (11 NYCRR 65.15 and Insurance Law §5108)." Additionally, Notice is taken of the New York State Insurance Department Opinion No. 01-06-07, rendered on June 11, 2001. The opinion was with regard to whether various services, including spinal ultrasound for soft tissue injuries (such as the present billing), are covered under the No-Fault Law. Reference was made to Insurance Law, Section 5102(a), which requires that a service be necessary and that it must be a covered expense. The opinion further states: With regard to the services the inquirer referred to, none of these services specified are reimbursable as covered health expenses unless they are specifically provided by health professionals who are licensed by the State of New York to perform such services, subject further to the requirement that the provision of these services must fall within the scope of the license issued. Where there is no statewide license which authorizes the performance of such services, the services are non-reimbursable under No-fault."

Therefore, since Applicant has failed to show that they met the licensing requirements to bill under New York State's no-fault statutes and regulations, I am constrained to deny the claim. Accordingly, Applicant's claim is denied in its entirety.

Likewise, in the instant case, I was persuaded by Mr. Futoran's affidavit and the awards submitted, and for the reasons noted above, I find that Applicant is not entitled to reimbursement for no-fault benefits.

Accordingly, Applicant's claim is denied in its entirety.

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 Westchester

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

08/04/2024
(Dated)

Robyn McAllister

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:

6ff1ddffa86c0c96a5bbc3159aa8a9b6

Electronically Signed

Your name: Robyn McAllister
Signed on: 08/04/2024