

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1337-8057
Applicant's File No.	AR24-23558
Insurer's Claim File No.	055202176-0000-002
NAIC No.	35882

ARBITRATION AWARD

I, Evelina Miller, 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: NB

1. Hearing(s) held on 07/09/2024
Declared closed by the arbitrator on 07/09/2024

Alek Beynenson Esq from The Beynenson Law Firm, PC participated virtually for the Applicant

Kevin Smith Esq from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$820.74**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the time of the hearing Applicant amended amount in dispute to \$670.83.

Applicant reduced amount billed for each date of service in dispute to \$30.65 to reflect proper fee schedule for CPT codes 97014 and 97010.

Furthermore, Applicant withdrew with prejudice dos 6/17/21 in the amount of \$99.08 (CPT code 99214) from the amount in dispute.

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

3. Summary of Issues in Dispute

The dispute arises from the underlying automobile accident on November 27, 2020, in which the Assignor (NB), a 52-year-old-female was involved. Thereafter, Assignor sought private medical attention and was eventually recommended to undergo P.T. The bill in dispute is for P.T. performed on 12/4/20-6/17/21. Respondent denied Applicant's bills dated 12/4/20-6/17/21, based on fee schedule.

The issue presented at the hearing is whether Respondent was able to establish its burden in coming forward with competent evidentiary proof to support its fee schedule defenses

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in MODRIA which are maintained by the American Arbitration Association. These submissions are the record in this case. My decision is based on my review of that file, as well as the arguments of the parties at the hearing. All the parties at this hearing appeared via ZOOM.

Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and 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 Co.*, 5 A.D.3d 742, (2d Dept., 2004). Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See *Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004, NY Slip Op 24034 [Civ. Ct., Kings County 2004]). Here, Applicant sustains its burden.

Applicant submitted the bills to the Respondent for dates of service of 12/4/20-6/17/21 for PT. treatment. Respondent denied Applicant's bills stating:

"The current procedure exceeds the calculation of the daily RVU cap that applies 1, 2 to all providers treating the same patient on the same day for the same accident as stated in the New York State Medical Fee Schedule Ground Rules. No additional reimbursement is allowed."

The rates charged by Applicant must be in accordance with Insurance Law § 5108, as the charges for services rendered "shall not exceed the charges permissible under the schedules prepared and established by the chairman of the Workers Compensation Board for Industrial Accidents, except where the insurer or arbitrator determines that unusual procedures or unique circumstances justify the excess charge."

In addition, § 5108 (c) states that, "no provider of health services... may demand or request any payment in addition to the charges authorized pursuant to this section."

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). If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims were in excess of the appropriate fee schedules, defendant'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 Dep't. per curiam, 2006).

Effective April 1, 2013, 11 NYCRR 65-3.8(g)(1) has been amended so that the application of the New York State Worker's Compensation fee schedule is no longer a precludable defense and no payment is due on those claims in excess of the fee schedule. Per 11 NYCRR 65-3.8(g), where the services were rendered after April 1, 2013, a defense of excessive fees is not subject to preclusion Surgicare Surgical Associates v. National Interstate Ins. Co., Misc.3d,N.Y.S.3d, 2015 N.Y. Slip Op. 25338 (App. Term 1st Dept. Oct. 8, 2015), aff'g, 46 Misc.3d 736, 997 N.Y.S.2d 296 (Civ. Ct. Bronx Co. 2014) (New Jersey fee schedule). The insurer is entitled to reduce the bills to the proper fee schedule amount.

Initially, Applicant reduced amount billed for each date of service in dispute to \$30.65 to reflect proper fee schedule for CPT codes 97014 and 97010. I take judicial notice of the fee schedule and find this amount to be correct.

Furthermore, Applicant withdrew dos 6/17/21 in the amount of \$99.08 (CPT code 99214) from the amount in dispute.

Respondent relies upon the 12 unit rule which went into effect on effect October 1, 2020 whereby, when multiple procedures and/or modalities are performed on the same day, the maximum number of relative value units is limited to 12.0 or the amount billed, whichever is less for all providers combined (New York Workers' Compensation Medical Fee Schedule, Ground Rule 11; Chiropractic Fee Schedule, Physical Medicine Ground Rule 3; Acupuncture Fee Schedule, Medicine Ground Rule #1B; Physical Therapy and Occupational Therapy Fee Schedule, Physical Medicine Ground Rule 3).

Respondent does not submit a coder's affidavit, or an affidavit from anyone with expert knowledge of the fee schedule to support its fee schedule reduction. Furthermore, Respondent does not submit proof that this provider or another provider has been reimbursed in the total of 12 units per date of service. As such, I find that Respondent failed to reach its 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., Id.

Accordingly, Applicant's claim for reimbursement P.T. treatment is granted in the amount of \$149.78 for dates of service of 12/4/20, \$275.85 (\$30.65 x 9 dos) for dates of service of 12/6/20-12/29/20, \$122.60 (\$30.65 x 4 dos), and \$122.60 (\$30.65 x 4 dos), for dates of service of 4/5/21-4/25/21.

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
	Brooklyn Medical Practice, PC	12/04/20 - 12/04/20	\$149.78	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	12/06/20 - 12/29/20	\$302.76	\$275.85	Awarded: \$275.85
	Brooklyn Medical Practice, PC	03/03/21 - 03/29/21	\$134.56	\$122.60	Awarded: \$122.60
	Brooklyn Medical Practice, PC	04/05/21 - 04/25/21	\$134.56	\$122.60	Awarded: \$122.60
	Brooklyn Medical Practice, PC	06/17/21 - 06/17/21	\$99.08	\$99.08	Withdrawn with prejudice
Total			\$820.74		Awarded: \$670.83

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/24/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). In accordance with 11 NYCRR 65-3.9c, interest shall be paid on the claims totaling \$670.83 from the date the arbitration was commenced.

- C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee upon the amount awarded plus the interest, as calculated in section "B" above, and in accordance with 11 NYCRR 65-4.6(e), i.e., 20 percent of the amount of first party benefits, plus interest thereon. The minimum attorney's fee payable shall be in accordance with 11 NYCRR 65-4.6c. For cases filed after February 4, 2015, there is no minimum attorney's fee but there is a maximum fee of \$1,360.00. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b)."

- 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 Kings

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

08/07/2024
(Dated)

Evelina Miller

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:
cb894cea926a1639d0cb881d611e7bdf

Electronically Signed

Your name: Evelina Miller
Signed on: 08/07/2024