

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

JTK Chiropractic Care PC  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

AAA Case No. 17-24-1340-1794  
Applicant's File No. GTLJTK121823.010  
Insurer's Claim File No. 953422601  
NAIC No. 24260

### ARBITRATION AWARD

I, Aladar Gyimesi, 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: EIP

1. Hearing(s) held on 08/16/2024  
Declared closed by the arbitrator on 08/16/2024

George Lewis Jr., Esq. from Law Offices of George T. Lewis, Jr., PC participated virtually for the Applicant

Liz Peabody, Claim's Representative from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,537.76**, 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

In contention is Applicant's bill in the total sum of \$1,759.16, in connection with ultrasound testing of the cervical, thoracic, lumbar and sacral regions provided on December 18, 2023 by Bruce Jacobsen (D.C.), relative to a 49 year old female passenger EIP who was involved in a motor vehicle accident on December 4, 2023. Upon receipt of the reimbursement request of Applicant in controversy, Respondent issued a timely denial predicated upon its interpretation of the Fee Schedule as follows. "Based upon the billing and documentation submitted, reimbursement is being requested for ultrasound of the cervical thoracic lumbar spine and SI joints. We have reviewed your submissions and have determined that the services performed fit within the definition of code 76800; Ultrasound, spinal canal and contents. This service is being reimbursed as 1 unit".

Contemporaneous thereto, Respondent remitted a partial payment of \$221.40 to the Applicant. The entire resultant balance, in the total sum of \$1,537.76, is in dispute. The issue presented is the validity of Respondent's Fee Schedule defense.

#### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the pertinent documentation contained within the ADR Center as of the date of the hearing. Any issues contained in the record, not specifically raised at the time of the hearing, are considered by this Arbitrator to be moot and/or waived by the parties. This Award is based upon the oral argument, if any, of counsel and an analysis of the timely submission(s) of the respective parties hereto.

It is well settled that it is initially the Respondent's burden to support its interpretation of the Fee Schedule and/or the calculation and ultimate reduction of any applicable fees. W.H.O. Acupuncture, P.C. v. National Continental Ins. Co., 34 Misc. 3d 133 (A), 946 N.Y.S. 2d 70 (App. Term, 2<sup>nd</sup> Dept. - 2011) and National Acupuncture Health, et. al. v. Praetorian Ins. Co., 30 Misc. 3d 132 (A), N.Y. Slip Op 50040 (U) (App. Term, 1<sup>st</sup> Dept. - 2011). However Respondent has not offered any probative, competent, evidence in furtherance of its claim that the ultrasound testing in issue fits "within the definition of code 76800". In my view, in order for Respondent's Fee Schedule defenses to be possibly validated, an analysis from a Certified Professional Coder is required. No such offer of proof, however, has been tendered herein. At the hearing, Respondent's Claim's Representative noted that a portion of an April, 1998 CPT Assistant had been submitted in support of Respondent's defense. As set forth therein, it is inappropriate to report code 76800 "for each area of the spine. From a CPT coding perspective, code 76800 includes the entire spinal canal". It is appreciated, however, that Applicant sought reimbursement pursuant to "by report" fee code 76999. Additionally, as per Applicant's ultrasound report, testing was performed upon "additional areas outside of the spine which include, but not limited to, the bilateral para spinal musculature and related structures". Therefore, notwithstanding the CPT Assistant's limitation as to one unit of recovery pursuant to fee code 76800, regardless of the number of spinal segments tested, in my judgment Respondent's proof is deficient since there is no probative evidence fee code 76800 was even appropriately selected pursuant to a "by report" relativity analysis. After due deliberation, in light of all of the above, I find Respondent's Fee Schedule defense to be invalid as a matter of law. Nyack Hospital, etc. v. State Farm Mutual Automobile Insurance Company 11 AD 3d 664, 784 NYS2d 136 (App. Div., 2nd Dept. - 2004). Therefore, in order to prevail herein, Applicant merely needs to establish its prima facie claim.

To do so Applicant needs only to submit proof that a statutory billing form, i.e., an NF-3 or its equivalent (see, e.g., Rockaway Boulevard Medical v. Progressive, 9 Misc 3d 52, 802 N.Y.S.2d 302 [2005]), was mailed and received by the No-Fault carrier and that payment relative thereto has not been made. Countrywide Ins. Co. v. 563 Grand Medical, P.C., 50 A.D. 3d 313, 855 N.Y.S. 2d 439 (App. Div., 1<sup>st</sup> Dept. - 2008); LMK Psychological Services, P.C. v. Liberty Mutual Ins. Co., 30 A.D. 3d 727, 816 N.Y.S. 2d

587 (App. Div., 3<sup>rd</sup> Dept. - 2006), and; Sunshine Imaging Association/WNY MRI v. Government Employees Ins. Co., 66 A.D. 3d 1419, 885 N.Y.S. 2d 557 (App. Div., 4<sup>th</sup> Dept. - 2009). In the instant matter Respondent has acknowledged, as set forth in Respondent's subsequently issued denial, receipt of the reimbursement request of Applicant in dispute. This is sufficient to establish Applicant's submission, and Respondent's receipt, of Applicant's NF-3 relative thereto. VA Acupuncture Acupuncture, P.C. v. State Farm Ins. Co., 2007 N.Y. Slip Op 51217(U), 16 Misc 3d 126(A) (App Term, 2<sup>nd</sup> Dept - 2007); Ultra Diagnostic Imaging v. Liberty Mutual Insurance Co., 9 Misc 3d 97, 804 N.Y.S. 2d 532 (App Term, 2<sup>nd</sup> Dept - 2005), and; Lopes v. Liberty Mutual Ins. Co., 2009 WJL 1799812 (App Term, 2<sup>nd</sup> Dept. - 2009). In view of all the above I therefore conclude Applicant has sustained its burden of proof, on a prima facie basis, with regard to the ultrasound testing performed upon the within EIP on December 18, 2023. I award Applicant the alleged balance due and owing, in the total sum of \$1,537.76, in connection therewith.

In the instant matter, Respondent issued a denial(s) and Applicant did not commence this Arbitration proceeding within thirty days after its receipt of the subject denial(s). As a result, any additional interest on the sum(s) awarded herein shall accrue as of the commencement date of the within arbitration. Lastly, attorney's fees shall be calculated against the total, "aggregate", Award. LMK Psychological Servs. P.C. v. State Farm Mutual Ins. Co., 12 NY3d 212, 879 N.Y.S.2d 14 (2009); Office of General Counsel, State of New York Insurance Department, Opinion Letters dated November 30, 2009 and September 14, 2010.

Accordingly, after a careful review of all the evidence and due regard for the argument of counsel, my Award is in favor of the Applicant. I find Applicant has sustained its prima facie burden of proof relative to the reimbursement request in controversy. Consequently, I award Applicant the total requested sum of \$1,537.76 in such a regard.

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
	<b>JTK Chiropractic Care PC</b>	<b>12/18/23 - 12/18/23</b>	<b>\$1,537.76</b>	<b>Awarded: \$1,537.76</b>
<b>Total</b>			<b>\$1,537.76</b>	<b>Awarded: \$1,537.76</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 03/14/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to No-fault Regulation 65-3.9(a), where the underlying motor vehicle accident occurred after Apr. 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.

The end date for the calculation of the period of interest shall be the date of Respondent's payment to the Applicant of the Award herein. In calculating the interest, pursuant to General Construction Law §20, the date of accrual shall be excluded from the calculation. Absent any credible proof as to Respondent's actual receipt of an NF-3 or its practical equivalent, or of Applicant's actual receipt of Respondent's denial, pursuant to CPLR §2103(b)(2) it is presumed that Respondent received Applicant's NF-3 or its practical equivalent, and/or that Applicant received Respondent's denial, five days after same was mailed and the "submission" date or "received" date, as hereinafter set forth, reflect such computations.

As to the date that Applicant's interest claim accrued, pursuant to LMK Psychological, supra, I find as follows:

Pursuant to No-fault Regulation 65-3.9(c), interest shall be paid, on the total sum of \$1,537.76 from 3/14/24, 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

Pursuant to LMK Psychological Services P.C., P.C. v. State Farm Mutual Ins. Co., 12 NY3d 212, 879 N.Y.S2d 14 (2009), Opinion Letter of the Office of General Counsel of the State of New York Insurance Department dated October 8, 2003 and No-fault Regulation §65-4.6, I find that Respondent is obligated to pay Applicant an attorney's fee as set forth below:

Twenty percent of the total Award of \$1,537.76, plus interest. Such a fee is not to exceed, under ordinary circumstances, the sum of \$850 nor be less than a minimum fee of \$60 if the instant claim was submitted to the AAA prior to 2/4/15. If the subject claim was submitted to the AAA subsequent to the aforementioned date, the attorney's fee shall be twenty percent of the total Award, plus interest, with no minimum fee and a maximum fee of \$1,360.

- 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 NY

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

08/23/2024

(Dated)

Aladar Gyimesi

**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:**  
a3daa750752e2e5b7b1d969c9caf3b66

**Electronically Signed**

Your name: Aladar Gyimesi  
Signed on: 08/23/2024