American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC (Applicant)	AAA Case No.	17-23-1293-6141
	Applicant's File No.	155.886
- and -	Insurer's Claim File No.	8722744490000001
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Glen Cacchioli, 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 08/27/2024
   Declared closed by the arbitrator on 08/27/2024

   Sakrit Srivastava, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

   Diana Gonzalez, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,230.19**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant's claim has been reduced to $1206.82 as follows: $239.57 for DOS 2/2/22-2/25/22; $930.34 for DOS 11/22/21-12/1/22; $36.91 for DOS 10/27/21.

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

3. Summary of Issues in Dispute

   The Assignor was involved in a motor vehicle accident on October 25, 2021. Following the accident Assignor underwent treatment at Applicants PC. Applicant billed Respondent for the treatment. Respondent partially reimbursed Applicant based on the 12-unit rule and fee schedule and denied part of the bill based on the 45-day rule.

4. Findings, Conclusions, and Basis Therefor

The hearing was conducted via Zoom and was decided on the documents contained in the ADR Center and the oral arguments of counsel/representative at the hearing. Only those arguments presented at the hearing are addressed in this decision and any other arguments not presented at the hearing are deemed waived. There were no witnesses.

On October 25, 2021, Assignor was involved in a motor vehicle accident. Subsequently, Assignor came under the care and treatment of Applicant.

Applicant billed respondent for treatment rendered between November 22, 2021, and December 1, 2021. Respondent reimbursed applicant contending "when multiple procedures and/or modalities are performed on the same day, the maximum number of relative value units is limited to 12.0 units or the amount billed, whichever is less for all providers combined." The amount in dispute is $930.34.

Applicant also billed respondent $239.59 for treatment rendered between February 2, 2022, and February 25, 2022. Respondent denied reimbursement contending the bill was not received within 45 days.

Applicant also billed respondent $142.62 for an office visit performed by a nurse practitioner on October 27, 2021. Respondent reimbursed applicant $114.10, leaving an amount in dispute of $36.91. I note that a plain reading of the fee schedule shows that respondent reimbursed applicant 80% of the proper fee schedule amount for an office visit as specified in Ground Rule 11 of the New York Worker's Compensation Medicine Fee schedule (nurse practitioner performed the examination). As such, applicant's claim for additional reimbursement is denied.

FEE DISPUTE (DOS 11/22/21-12/1/21)

Respondent has the burden of coming forward with competent evidentiary proof to supportits 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). See also, Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (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).

As noted above Respondent reimbursed applicant contending "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.

Respondent submitted evidence that Applicant's claim was paid as per the 12 Unit Rule. The evidence revealed that the Respondent paid monies to another provider for the same dates of service.

Applicant's counsel argued that the rule should not apply here, where two different medical providers with two different specialties are treating the Assignor.

Both Ground Rule 11 of the Worker's Compensation Physical Medicine fee schedule and Ground Rule 3 of the Worker's Compensation Chiropractic fee schedule provide that when multiple physical medicine procedures and/or modalities are performed on the same day, reimbursement is limited to 12 RVUs or the amount billed whichever is less.

DISCUSSION

The court in Doctor of Medicine in the House v. Allstate Ins. Co., 41 Misc.3d 983, 975 N.Y.S.2d 591 (Dist Ct. Suffolk Co. Hackeling, J. September 30, 2013), in an apparent case of first impression, rejected a defense that the insurer "had already reimbursed other providers for 8.0 units of service." However, Arbitrator Andrew Horn in **AKA Chiropractic v. Allstate, AAA Case No.: 412013066180, 1/30/14,** and Arbitrator Glen Weiner in **Ariel Chiropractic, P.C. v.Geico, AAA Case No.: 412013087214, 1/24/14,** respectfully declined to follow the holding of the District Court of Suffolk County. As Arbitrator Weiner so aptly noted: "Judge Hackeling's holding is a misinterpretation of Ground Rule 11 which clearly limits reimbursement of all providers performing physical medicine services on the same day." Id.

I noted that in a subsequent decision, Doctor of Medicine in the House v. Allstate, 2013 WL 10208650 (Dist. Ct. Suffolk Co. 2013, December 12, 2013), Judge Hackeling voluntarily set aside his own prior decision and now accepts the validity of the 8-unit rule. In his subsequent decision, Judge Hackeling cited an opinion by the Workers Compensation Board dated April 7, 2006 which noted as follows: "The limits of RYE {'relative value'} as established in the Medical Fee Schedule Physical Medicine section

Ground Rule 8 [13.5 units] and 11 reflect the maximum number of units payable per claimant per day regardless of the number of providers treating the claimant on a given date of service with or without the same Tax ID number."

In reviewing the case law and after hearing the oral arguments of counsel I find that Respondent is only required to pay12 units per day per claimant. Respondent is not required to pay each provider, even if treating different body parts or the provider has a different specialty, the maximum number of units on a given day. To do so would force Respondents to reimburse every provider of physical medicine and chiropractic treatment the maximum amount of units per day no matter how many providers treated the Assignor, which is not what the Ground Rules intended. Since Respondent has submitted proof that it previously made payments to another provider which used up the maximum 12 units permitted to be billed under the Ground Rules. As such, I uphold Respondent's denial for further reimbursement. Accordingly, this part of Applicant's claim is denied.

45 DAY RULE (DOS 2/2/22-2/25/22)

Respondent contends that applicant failed to submit its bill within 45 days.

An applicant establishes a *prima facie* showing of its entitlement to No-Fault benefits as a

matter of law by submitting evidentiary proof that the prescribed statutory billing forms had beenmailed and received and that payment of No-Fault benefits were overdue. Sunshine Imaging Association/WNY MRI v. Government Employees Ins. Co., 66 A.D.3d 1419, 885 N.Y.S.2d 557 (4th Dept. 2009); Westchester Medical Center v. Lincoln General Ins. Co., 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); Westchester Medical Center v. Clarendon National Ins. Co., 57 A.D.3d 659, 868 N.Y.S.2d 759 (2d Dept. 2008); New York and Presbyterian Hosp. v. Allstate Ins. Co., 31 A.D.3d 512, 818 N.Y.S.2d 583 (2d Dept. 2006); LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co., 30 A.D.3d 727, 816 N.Y.S.2d 587 (3d Dept. 2006).

Applicant contends it mailed the bills timely. In support it has submitted an affidavit of faxing from Jeanette Perez. The affidavit indicates the following: the name of the Applicant's facility; the name of the Assignor; where the article was sent - here the correct fax number of the Respondent; the date (3/23/22) when the fax was sent; the confirmation that the fax was received (3/23/22); the DOS (2/2/22-2/25/22); the amount in dispute ($262.94, which is the amount before Applicant amended it to $239.57 at the hearing).

A review of the competent evidence in the record reveals that Applicant has established a primafacie case of entitlement to reimbursement of its claim by timely submitting its bill. As outlined above the affidavit of faxing clearly established the bill was mailed to Respondent properly and timely thus establishing Applicant's prima facie case. Accordingly, this part of Applicant's claim is granted in the amount of $239.57.

CONCLUSION: Applicant is awarded $239.57 in full satisfaction of all claims brought in this arbitration.

DECISION: PARTIAL AWARD IN FAVOR OF APPLICANT

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	**10/27/21 - 10/27/21**	**$36.91**	**$36.91**	**Denied**
	Brooklyn Medical Practice, PC	**12/01/21 - 12/29/21**	**$440.79**	**$440.79**	**Denied**
	Brooklyn Medical Practice, PC	**11/01/21 - 11/22/21**	**$489.55**	**$489.55**	**Denied**
	Brooklyn Medical Practice, PC	**02/02/22 - 02/25/22**	**$262.94**	**$239.57**	**Awarded: $239.57**
Total			**$1,230.19**		**Awarded: $239.57**

B. The insurer shall also compute and pay the applicant interest set forth below. 04/03/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is to be calculated from the date of filing of the AR-1 (4/3/23). The end for the calculation of the period of interest shall be excluded from the calculation. In calculating interest, the date of accrual shall be excluded from the calculation (General Construction Law Section 20). Where a motor vehicle accident occurs after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple interest, calculated on a pro rate basis using a 30 day month. 11 NYCRR 65-3.9(a).

C. Attorney's Fees

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

As this matter was filed after February 4, 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 11 NYCRR 65-4.6(d).

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

09/03/2024
(Dated)

Glen Cacchioli

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:
77f9920e224daa2211d04c251f86a139

Electronically Signed

Your name: Glen Cacchioli
Signed on: 09/03/2024