American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Comfort Therapy Solutions Inc. , Med Durable Inc. , Sanford Radiology PC (Applicant)	AAA Case No.	17-24-1333-6530
	Applicant's File No.	3089624
- and -	Insurer's Claim File No.	230379416
	NAIC No.	29688
Allstate Fire & Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Anne Malone, 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 08/26/2024
   Declared closed by the arbitrator on 08/26/2024

   Gary Pustel, Esq. from Israel Purdy, LLP participated virtually for the Applicant

   Stephanie Vitiello, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$10,136.47**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed for cervical and lumbar and lumbar spine MRI studies was amended by the the applicant to $1728.97 to conform to the appropriate fee schedule. The total amount claimed is $9,894.55.

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

3. Summary of Issues in Dispute

   This claim involves three different applicants: Comfort Therapy Solutions, Inc., (CTS) Med Durable, Inc. (MD) and Sanford Radiology (SR). The 60 year old EIP reported involvement in a motor vehicle accident on May 9, 2023; claimed

related injury and underwent MRIs of the cervical and lumbar spine on June 15, 2023, Left ankle on June 19, 2023 and right knee on August 8, 2023. (SR), Pain Away Home Care DME (MD) and cold compression therapy system with lumbar wrap DME on June 22, 2023 (CTS).

The applicants submitted claims for these medical services and durable medical equipment, payment of which was denied by the respondent because it did not receive notice of this claim within 30 days of the date of the subject accident. However, the submissions only contain a general denial and no specific denials of each claim.

The respondent also asserted a fee schedule defense.

The issues to be determined at the hearing are:

Whether the respondent established its defense of late notice of the claims at issue.

Whether the respondent established its fee schedule defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Late notice of claim

It is well settled that an applicant establishes its *prima facie* showing of entitlement to no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense on the ground that plaintiff untimely notified the respondent of the claim at issue if such defense is not raised in a timely denial. New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001); St. Clare's Hospital v. Allcity Ins. Co., 201 A.D.2d 718 (2d Dept. 1994.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that "late notice will be excused where the applicant can provide a reasonable justification of the failure to give timely notice." 11

NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007); SZ Medical P.C. v. Country-Wide Insurance Co., 12 Misc.3d 52, 817 N.Y.S.2d 851 (App. Term 2nd and 11th Jud. Dists. 2006.)

In the instant matter, the respondent's denial was timely and it contained the requisite language regarding "reasonable justification" however, the submissions only include a general denial and no specific denials of claims for any of the three applicants.

Based on the forgoing, the applicant failed to provide evidence of timely notification of the claim at issue.

Therefore, an award will be issued in favor of the applicants pursuant to the appropriate fee schedule.

Fee schedule

In order to prevail in a fee schedule defense, the respondent must demonstrate by competent evidentiary proof that applicant's claims were in excess of the appropriate fee schedules, or otherwise respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Co., 11 Misc.3d 145(A) (App. Term 1st Dept. 2006.)

An insurer fails to raise a triable issue of fact with respect to a defense that the fees charged were not in conformity with the Workers' Compensation fee schedule when it does not specify the actual reimbursement rates which formed the basis for its determination that the claimant billed in excess of the maximum amount permitted. See St. Vincent Medical Services, P.C. v. GEICO Ins. Co., 29 Misc.3d 141(A), 907 N.Y.S.2d 441 (App. Term 2d, Dec. 8, 2010.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and often requires testimony and evidence beyond that of a lay individual.

The respondent supported its fee schedule defense, with the affidavit of Kimberly Spahr, CPC, CPMA a certified professional coder who submitted a comprehensive analysis and determined that the correct reimbursable amount for the services at issue is a total of $8,906.96:

Comfort Therapy Solutions, Inc. $2,250.00 billed $2,335.00

Med Durable, Inc. $2,995.00 $3,897.50

Sanford Radiology $3,662.05 $3,662.05

At the hearing, the applicant amended the amount for the cervical and lumbar MRI studies performed on the same day from $1,970.89 to $1,728.97 to conform to the appropriate fee schedule.

The applicant did not submit the affidavit of a certified professional fee coder, medical professional or other expert to refute the determination of the respondent's expert.

Based on the foregoing, the respondent established its fee schedule defense.

Accordingly, the applicant is awarded $8,906.96 in disposition of this claim.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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
	Comfort Therapy Solutions Inc.	**06/22/23 - 06/22/23**	**$2,335.00**		**Awarded: $2,250.00**
	Med Durable Inc.	**06/22/23 - 06/22/23**	**$3,897.50**		**Awarded: $2,995.00**
	Sanford Radiology PC	**06/15/23 - 06/15/23**	**$1,970.89**	**$1,728.97**	**Awarded: $1,728.97**
	Sanford Radiology PC	**06/19/23 - 06/19/23**	**$966.54**		**Awarded: $966.54**
	Sanford Radiology PC	**08/08/23 - 08/08/23**	**$966.54**		**Awarded: $966.54**
Total			**$10,136.47**		**Awarded: $8,907.05**

B. The insurer shall also compute and pay the applicant interest set forth below. 01/23/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York

Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of $1,360.00. See 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 CT
SS :
County of Fairfield

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

09/04/2024
(Dated)

Anne Malone

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:
f077b9424cc17b20066933ea34b6a3a0

Electronically Signed

Your name: Anne Malone
Signed on: 09/04/2024