

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Conrad F Cean MD, PLLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-23-1303-0522

Applicant's File No.

Insurer's Claim File No. 0578049780101020

NAIC No. 35882

ARBITRATION AWARD

I, Deepak Sohi, 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 09/11/2024
Declared closed by the arbitrator on 09/11/2024

Marc L. Schwartz from Cean Owens Law Group PLLC participated virtually for the Applicant

Justin Addison from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,398.59**, was AMENDED and permitted by the arbitrator at the oral hearing.

One unit of CPT code 64490, two units of CPT codes 64491 and 64492, and CPT codes 20553, and 76942 provided on date of service 4/19/2023, were withdrawn with prejudice as they were either reimbursed in full or denied pursuant to a settlement agreement entered into by the parties herein. As a result, the amount claimed was amended to \$138.57 to represent one unit of CPT code 64490 and to reflect previous payment pursuant to and comport with the New York State Workers' Compensation Board Medical Fee Schedule (WCFS).

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills. The parties also stipulated that Respondent's NF-10 denial of claim forms were timely issued.

3. Summary of Issues in Dispute

This arbitration arises out of cervical facet block injections (injections) provided to the EIP, a 50-year-old female, who was involved in a motor vehicle accident as a driver on 12/9/2022. Applicant is seeking reimbursement of the surgeon fee for the injections provided to the EIP on date of service 4/19/2023. Respondent argues that reimbursement for the surgeon fee for the injections should be based on a Settlement Agreement entered into by the parties.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

FEE SCHEDULE

CERVICAL FACET BLOCK INJECTIONS

DATE OF SERVICE 4/19/2023

An insurance carrier's timely asserted defense that the bills submitted were not properly No-Fault rated or that the fees charged were in excess of the Workers' Compensation fee schedule is sufficient, if proven, to justify a reduction in payment or denial of a claim. See New York Hosp. Med. Ctr. of Queens v. Country-Wide Ins. Co., 295 A.D.2d 583, 586 (2002); East Coast Acupuncture, P.C. v. New York Cent. Mut. Ins., 2008 NY Slip Op 50344(U) (App. Term 2d Dep't., Feb. 21, 2008); A.B. Med. Servs., PLLC v.

American Tr. Ins. Co., 15 Misc.3d 132(A), 2007 NY Slip Op 50680(U) (App. Term, 2nd & 11th Jud Dists. 2007); Rigid Medical of Flatbush, P.C. v. New York Cent. Mut. Fire Ins. Co., 11 Misc.3d 139(A), 816 N.Y.S.2d 700, 2006 NY Op 50582 (U) (App. Term 2nd & 11th Jud Dists. 2006); Ultra Diagnostics Imaging v. Liberty Mut. Ins. Co., 9 Misc.3d 97, 98, 804 N.Y.S.2d 532, 2005 N.Y. Slip Op. 25402 (App Term, 2d Dep't.); Capio Med., P.C. v Progressive Cas. Ins. Co., 7 Misc. 3d 129[A], 2005 NY Slip Op 50526 (U) (2005); Triboro Chiropractic & Acupuncture, PLLC v New York Cent. Mut. Fire Ins. Co., 6 Misc.3d 132 (A), 2005 NY Slip Op 50110 (U) (App Term, 2nd & 11th Jud Dists. 2005).

On 4/19/2023, the EIP underwent cervical facet block injections, for which the Applicant submitted a claim in the amount of \$1,398.59 for the surgeon's fee. Respondent issued payment in the amount of \$708.25 for the surgeon's bill leaving a balance of \$690.34. The balance was denied pursuant to a Settlement Agreement dated 2/4/2021, that was executed between the Respondent and Dr. Conrad F. Cean, MD, and the entities he controls. The issue presented is whether the Respondent has properly denied the disputed balance of this claim. At the hearing, Applicant amended the amount claimed to \$138.57 which represents one unit of CPT code 64490, which was denied by the Respondent.

In its denial, with regard to CPT code 64490 the Respondent stated, "Beyond allowable billed amount based on provider settlement."

Where an insurer sets forth a defense based upon fee schedule they are required to come forward with competent evidentiary proof to support its fee schedule defenses. 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). An Arbitrator is permitted to take judicial notice of the Worker's Compensation fee schedule. Kingsbrook Jewish Medical Center v. Allstate Insurance Company, 61 AD 3d 13 (2d Dept. 2009). When assessing whether an expert affidavit is required, if the fees can be determined from a straightforward reading of the fee schedule, no coder affidavit or fee audit is required. However, absent a straight-forward reading confirming the correct rate, Respondent has the burden of coming forward with competent evidentiary to support and establish its defenses.

I note that the record contains evidence of an agreement between the parties to this action, dated 2/4/2021, which has been incorporated into my findings, and which was the subject of oral argument at the hearing for this matter.

Applicant billed two units of CPT codes 64490, 64491, and 64492 for the cervical facet block injections, as well as CPT codes 20553 and 76942, which were reimbursed in full. In this case, both units of CPT codes 64490, 64491, and 64492 were denied, pursuant to the terms of this agreement. Both parties agree that pursuant to the agreement Applicant is limited to three (3) injections per EIP per motor vehicle accident, not to include trigger point injections. However, according to the medical records the Respondent had only reimbursed the Applicant for two (2) previous injections.

After carefully reviewing the evidence which has been presented, I find that the Respondent has not presented a sufficient evidentiary showing upon which to sustain the denial of this code. Accordingly, I find in favor of the Applicant in the amended amount.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of the Applicant. Consequently, the Applicant's claim is granted in the amended amount of \$138.57 for the balance of the surgeon's fee for the cervical facet block injections provided on date of service 4/19/2023.

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

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
	Conrad F Cean MD, PLLC	04/19/23 - 04/19/23	\$1,398.59	\$138.57	Awarded: \$138.57
Total			\$1,398.59		Awarded: \$138.57

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/09/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the filing date for this case until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d), subject to a maximum fee of \$1,360.00.

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

09/11/2024

(Dated)

Deepak Sohi

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:
63658184e69d9d8265c76a5417ff1daf

Electronically Signed

Your name: Deepak Sohi
Signed on: 09/11/2024