

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. 17-24-1342-9611
Applicant's File No. AR24-23972
Insurer's Claim File No. 8713166850000001
NAIC No.

ARBITRATION AWARD

I, Maryann Mirabelli, 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

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

Shaunt Francis Esq., from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,120.57**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute as it acknowledged payments made to the provider and withdrew the claims for 6/1/21 through 6/29/21 and 7/1/21 through 7/29/21. Applicant reduced the claims for the dates of service in August and September of 2021 to \$445.36 and is additionally seeking \$68.92 for date of service 9/30/21 for a total of \$514.28.

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

3. Summary of Issues in Dispute

The arbitration arises out of a motor vehicle accident which occurred on 4/15/21. The Assignor, a then 32-year-old male (RAB) was injured in the accident and sought treatment with the provider. Applicant is seeking to be reimbursed the sum of \$514.28 for physical therapy treatments performed in August and September of 2021, in addition to an office visit performed on 9/30/21, along with interest and counsel fees, under the No-Fault Regulations in connection with injuries sustained in the motor vehicle accident.

The threshold issue presented at the hearing is whether Respondent's fee schedule defense can be sustained.

4. Findings, Conclusions, and Basis Therefor

The hearing proceeded by ZOOM.

This decision is based upon the written submissions of counsel for the respective parties as well as oral argument. I have reviewed the documents contained in the Record as of the date of the hearing.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered...The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Orthopedic Rehabilitation a/a/o "I.B." v. Country-Wide Insurance Co., AAA Case No. 17-R-991-14272-3, stated, in relevant part, that "*the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at [his/her] decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents*".

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a prima facie case with the respect to the services that are the subject of this arbitration. See, Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Once Applicant has made out a prima facie case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 NY3d 312 (2007). Respondent's denials reflect that partial payments were made on these claims and the remainder of the bills were denied based upon a fee schedule defense. Respondent's denials specifically indicate,

"Provider's fee exceeds the maximum allowance under the applicable fee schedule and is reduced accordingly. As per section 5108 of the New York

State Insurance Law, Providers shall not exceed the charges permissible under the schedules prepared and established by the chairman of the Worker's Compensation Board."

"Pursuant to New York Physical and Occupational Therapy Fee Schedule Ground Rule 5, a physical or occupational therapist may only use the procedure codes contained in the Physical and Occupational Therapy Fee Schedule for billing of treatment. There is no allowance for this procedure in the New York State Worker's Compensation Fee Schedule under the provider's specialty."

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 Dept, per curiam, 2006).

Respondent has not submitted evidence supporting the fee schedule issue as raised for the remaining dates of service. The evidence does not support that the maximum allowance under the fee schedule was paid. Therefore, I award the amended claim in full, along with interest, an attorney's fee and the arbitration filing fee, as outlined below in Sections A through D below.

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
	Brooklyn Medical Practice, PC	06/01/21 - 09/30/21	\$1,120.57	\$514.28	Awarded: \$514.28
Total			\$1,120.57		Awarded: \$514.28

B. The insurer shall also compute and pay the applicant interest set forth below. 04/04/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest on the above-awarded amount shall be computed and paid at a rate of 2% per month, simple, commencing on the date the claim was filed in arbitration and ending with the date of payment of the award.

C. Attorney's Fees

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

An attorney's fee of 20% shall be paid on the sum total of the awarded claim plus interest, subject to a maximum 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 Nassau

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

09/12/2024
(Dated)

Maryann Mirabelli

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:
13ba5c3d160b51a3a9c17b149ab2d018

Electronically Signed

Your name: Maryann Mirabelli
Signed on: 09/12/2024