

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Avicenna Surgery Center  
(Applicant)

- and -

New York City Transit Authority  
(Respondent)

AAA Case No. 17-24-1333-9485

Applicant's File No. 00128366

Insurer's Claim File No. BU202209070014001

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Ioannis Gloumis, 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 08/27/2024  
Declared closed by the arbitrator on 08/27/2024

John Kilduff, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Laura Weiss, Esq. from Foley, Smit, O'Boyle & Weisman participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$13,783.37**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

Respondent stipulated that Applicant should be awarded \$6,723.47 for the claim that is in dispute

3. Summary of Issues in Dispute

Applicant seeks reimbursement of charges for Ambulatory Surgery Center ("ASC") fees related to the left shoulder surgery that was performed on January 19, 2023, following a November 3, 2022 motor vehicle accident. Respondent denied the charges in dispute based upon the defense that Applicant's charges are not in accordance with the applicable fee schedule.

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

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments that were presented by the parties during the arbitration hearing and the documentary evidence that has been submitted by the parties. There were no witnesses that testified during the arbitration hearing.

The EIP, then a 61-year-old female, was injured in a motor vehicle accident on September 7, 2022. Following the accident, the EIP sought private medical attention for multiple injuries. According to the operative report dated January 19, 2023, W. Joseph Gorum, M.D. performed left shoulder surgery at Applicant's ASC, which consisted of arthroscopic ablation of the bursa, rotator cuff repair, debridement, Coblation chondroplasty, and synovectomy.

Applicant billed Respondent in the total amount of \$13,783.37 for ASC fees related to the surgical procedures that were performed on January 19, 2023. Applicant billed Respondent using CPT codes 29827 LT (\$6,723.47), 29823 LT 59 (\$3,029.95), 29999 59 (\$3,029.95), and C1713 (\$1,000.00). Applicant's proof demonstrates that Applicant mailed its bill for the claim in dispute to Respondent on February 2, 2023. Respondent's claim specific denial states that the bill in dispute was received by Respondent on February 13, 2023. Thus, Applicant has established its prima facie case. See *Amaze Med. Supply Inc. v. Allstate Ins. Co.*, 3 Misc 3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc 3d 767 (Civ Ct, NY County 2004); *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

Respondent defends the claim in dispute based upon the defense that Applicant's charges are not in accordance with the applicable fee schedule. Respondent stipulated that Applicant should be awarded \$6,723.47 for the claim that is in dispute.

Respondent's attorney argued that reimbursement of ASC fees are calculated by using the EAPG methodology; and the EAPG reimbursement methodology classifies and assigns any procedure code (CPT code) submitted for reimbursement into these main categories, referred to as EAPG Types:

- significant procedure

- medical visit
- ancillary procedure classification
- incidental
- unassigned

Respondent's attorney provided the assigned EAPG Methodology for the CPT codes that were billed by Applicant:

29823 - EAPG 37, EAPG Type 2, EAPG Category 3

29827 - EAPG 38, EAPG Type 2, EAPG Category 3

29999 - EAPG 37, EAPG Type 2, EAPG Category 3

Respondent's attorney argued that when more than one significant procedure is provided, the fee for the service may be consolidated or discounted, depending upon whether the service is related or unrelated to the significant procedure. Respondent's attorney further stated that the EAPG "Significant Procedure Consolidation" list provides that the services under CPT code 29827 (level 1 arthroscopy) are "consolidated" into EAPG 38; and since both CPT codes 29823 and 29999 (EAPG 37) require minimal additional time or resources, they "collapse" into EAPG 38 (CPT code 29827) for the purposes of reimbursement; thus, in calculating the reimbursement owed to Applicant for the services rendered to its assignor on January 19, 2023, pursuant to the EAPG methodology, reimbursement is limited to CPT code 29827, which was properly billed at \$6,723.47. Respondent provided a captured image of the EAPG 39 Level II Arthroscopy.

Applicant also billed \$1,000.00 under CPT Code C1713. Respondent's attorney stated that the 3M software assigns CPT code C1713 to EAPG 2006; that the NYS "Never Pay" list includes APG 2006, excluding it from reimbursement. Respondent's attorney provided a captured image from the "Never Pay" List. The "Never Pay" list shows that EAPG 2006 is included on the list and states that no alternative payment is available.

Moreover, Respondent's attorney argued that although Applicant appended "Modifier 59" to CPT codes 29823 and 29999, the APG Manual defines Modifier as follows:

*CPT Modifier 59 (Separate Procedures or Distinct Procedural Service):* CPT Modifier 59 should be used to designate instances when distinct and separate multiple services with the same APG are provided to the patient on a single date of service (eg. separate encounters, different surgeries, different sites or organ systems, separate incisions). Modifier 59 may also be used to report those procedures/services considered a component of another procedure, when the service is carried out independently or considered unrelated or distinct from the other procedures/services provided at the same time. Normally when multiple procedures map to the same APG, the additional occurrences (beyond the first) will consolidate (i.e., no payment at the line level). However, when Modifier 59 is used, the additional same APG procedures will pay at 50% of the amount paid for the first procedure.

Respondent's attorney argued that Modifier 59 is used appropriately for different anatomic sites during the same encounter only when procedures which are not ordinarily performed or encountered on the same day are performed on different organs, or different anatomic regions, or in limited situations on different, non-contiguous lesions in different anatomic regions of the same organ. Respondent's attorney further argued that the operative report demonstrates that all the services were performed to the same anatomic site at the same operative session; therefore, appending Modifier 59 to these services for an ASC facility is not appropriate.

In *Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co.*, 13 Misc.3d 172 (Civil Ct, Kings Co. 2006), the Court held that it is Respondent's burden to come forward with competent evidentiary proof to support its fee schedule defenses. See also, *Continental Medical PC v. Travelers Indemnity Co.*, 11 Misc.3d 145A (App. Term, 1st Dep't, per curiam, 2006); See also *Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co.*, 11 Misc.3d 1065A (Civil Ct, Kings Co. 2006).

The NCCI Policy Manual, Chapter IV, Surgery: Musculoskeletal System, CPT Codes 20000-29999 provides that shoulder arthroscopy procedures include extensive debridement (e.g., CPT code 29823) even if the extensive debridement is performed in a different area of the same shoulder than the other procedure; CPT codes 29824 (Arthroscopy, shoulder, surgical; distal claviclelectomy including distal articular surface (Mumford procedure)), 29827 (Arthroscopy, shoulder, surgical; with rotator cuff repair), and 29828 (Arthroscopy, shoulder, surgical; biceps tenodesis) may be reported separately with CPT code 29823 if the extensive debridement is performed in a different area of the same shoulder.

Following a complete review of the evidence presented, and based upon a review of the EAPG and NCCI, I find that CPT codes 29823 and 29999 (EAPG 37) "collapse" into EAPG 38 under CPT code 29827 according to the significant procedure consolidation rule for multiple related significant procedures; and that CPT code C1713 is not reimbursable under the EAPG. Respondent stipulated that CPT code 29827 was properly billed at \$6,723.47 under the New York EAPG. Consequently, Applicant is awarded \$6,723.47 for its claim.

Accordingly, Applicant's claim is hereby granted in the amount of \$6,723.47.

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
	Avicenna Surgery Center	01/19/23 - 01/19/23	\$13,783.37	Awarded: \$6,723.47
Total			\$13,783.37	Awarded: \$6,723.47

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/25/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay Applicant the amount of interest computed from the date of filing, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of *11 NYCRR 65-3.9(c)* (stay of interest).

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee in accordance with *11 NYCRR 4.6*.

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

09/18/2024  
(Dated)

Ioannis Gloumis

**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:**  
889e7ff2b5acc531d46ce0086d29a9a0

### Electronically Signed

Your name: Ioannis Gloumis  
Signed on: 09/18/2024