

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rockwell Medical Care PC
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1344-1869

Applicant's File No. RMPC 494.01,
02

Insurer's Claim File No. 23-3015102

NAIC No. 11851

ARBITRATION AWARD

I, Patricia Daugherty, 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 08/30/2024
Declared closed by the arbitrator on 08/30/2024

Michael Lamond from Michael J. Lamond PC participated virtually for the Applicant

Johnny Ko from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,694.65**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel amended the amount in dispute to \$2,446.31 pursuant to its interpretation of the fee schedule.

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

3. Summary of Issues in Dispute

Assignor, "SA," was involved in a motor vehicle accident on July 30, 2022. At issue in this case is a claim in the amended amount of \$2,446.31 for a consultation and the balance of biowave procedures and shockwave therapy treatment rendered to Assignor

on October 5, 2023. Respondent issued a partial payment for the services, denying the balance asserting PPO and fee schedule defenses. The issues to be determined are whether Respondent properly denied the balance of Applicant's claim.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Applicant submitted a claim in the original amount of \$3,724.72 for a consultation, biowave procedures, electrodes and shockwave therapy treatment rendered to Assignor on October 5, 2023. Respondent issued partial payments in the amount of \$1,030.07, denying the balance asserting PPO and fee schedule defenses. At the hearing Applicant amended its claim seeking \$2,446.31.

PPO

Respondent argues that the services in dispute are subject to a Multiplan contract, an affiliate of the Coventry network and reimbursement for the biowave procedures and shockwave therapy treatment was reimbursed pursuant to the contract.

However, reviewing the record, Respondent has not submitted any evidentiary in support of its PPO defense. As such, Respondent has not established that Applicant was a party to a PPO Agreement binding on the subject claim.

Fee Schedule

Respondent argues that Applicant billed the services in excess of the fee schedule. Specifically, Respondent argues that the fee schedule rate for the services rendered is \$2,204.36 and Applicant was already reimbursed \$1,030.07, leaving a balance of \$1,174.29.

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). 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).

Judicial notice of the New York State Worker's Compensation Medical Fee Schedule and the CPT Assistant is taken. See Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D.3d 13, (2nd Dept. 2009); LVOV Acupuncture, P.C. v. Geico Ins. Co., 32 Misc.3d 144(A), 2011 NY Slip Op 51721(U) (App Term 2d, 11th & 13th Jud Dists. 2011);

Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 NY Slip Op 50040(U) (App Term, 1st Dept. 2011). Matter of Global Liberty Ins. Co. v. McMahan, 172 A.D.3d 500 (1st Dept 2019).

I find that when the calculation of the proper fee for a particular service or procedure is clearly set forth in the schedule, an interpretation of the schedule by a qualified professional is not required. However, when there is more than one reasonable interpretation of the proper fee for a particular service rendered, an interpretation by a qualified professional is required.

Applicant billed the following CPT codes: 99243 (\$248.34); 64999 (\$1,078.30); 64999-59 (\$539.15); 99070 (\$560.00); 0101T (\$700.39) and 0101T-59 (\$350.20). Applicant billed the services using the physician rate.

In support of its fee schedule defense Respondent submitted a fee audit from Sarah Lindenauer, CPC who concluded that the fee schedule rate for the services is \$2,204.36. Ms. Lindenauer allowed the billed amount for 99070. She recoded 99243 to 99213 based upon the medical documentation; allowed only 1 unit of 0101T asserting that only 1 unit is reimbursable per date of service; applied Surgery ground Rule 5 for multiple procedures to the 1 unit of 0101T and second unit of 64999; then reduced 99213, 0101T and both units of 64999 to 80% asserting that the services were rendered by a physician assistant.

After a thorough review of the record, I am not entirely persuaded by Ms. Lindenauer's fee audit. Foremost, it is unclear from the record whether the services were rendered by Dr. Rachunow or a PA. Respondent should have requested additional verification to determine the role of Dr. Rachunow in performing the services. Absent such information, the applicable rate herein should be the physician rate. Ms. Lindenauer acknowledges that the physician rate for 64999 is \$1,078.30 and 64999-59 is \$539.15. These are the amounts billed by Applicant. I am persuaded by Ms. Lindenauer's recoding of 99243 to 99213 and find that Applicant is entitled to \$87.80 for the office visit.

Regarding the shockwave therapy treatment, I do not agree with Ms. Lindenauer that Applicant was limited to 1 unit as the treatment was rendered to the lumbar spine and right shoulder. An inquiry (#13736) regarding CPT 0101T was brought to the AMA where the question asked was: "Can the code be used more than once per visit if the procedure is performed on distinct body areas (i.e knee and neck, etc)?"

The AMA responded in part:

it may be appropriate to report code 0101T, Extracorporeal shock wave involving musculoskeletal system, not otherwise specified, with modifier 59, Distinct procedural services. If the procedure is performed on separate anatomical body regions/areas in the musculoskeletal system (eg, knee and neck) that require the efforts to be repeated on separate body regions in the course of the procedure, that require separate effort and work, it may be appropriate to report the code 0101T with modifier

59. Since code 0101T does not specify distinct levels, including the spine, if the entire spine is treated with extracorporeal shock wave therapy at one session, only one unit of 0101T may be reported.

In the instant matter the treatment in dispute was rendered to the lumbar spine and right shoulder. Applicant billed the second unit of 0101T using modifier 59 and reduced the second unit pursuant to Surgery Ground Rule 5 regarding multiple procedure reductions. I find the AMA's response to Inquiry #13736 sufficient authority to establish that multiple units of CPT 0101T may be reported using modifier 59, depending upon what body parts are being treated. However, I do find that both units of 0101T should be reduced to \$350.20 pursuant to Surgery Ground Rule 5.

The fee schedule rate for the services rendered is \$2,965.64. Applicant was already reimbursed \$1,030.07 and is therefore entitled to the balance of \$1,935.57.

Based on the foregoing, Applicant is awarded \$1,935.57.

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
	Rockwell Medical Care PC	10/05/23 - 10/05/23	\$1,617.06	\$1,368.72	Awarded: \$1,368.72
	Rockwell Medical Care PC	10/05/23 - 10/05/23	\$1,077.59	\$1,077.59	Awarded: \$566.85
Total			\$2,694.65		Awarded: \$1,935.57

B. The insurer shall also compute and pay the applicant interest set forth below. 04/15/2024 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. A claim is overdue when it is not paid within 30 days after an insurer receives proof of claim. (Insurance Law §5106[a];11 NYCRR 65-3.8(a)(1). All overdue benefits shall bear interest calculated at a rate of two percent per month, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(c).

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 §65-4.6. Therefore, the insurer shall pay the applicant an attorney's fee of 20% of benefits plus interest, with no minimum fee and 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 Suffolk

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

09/23/2024
(Dated)

Patricia Daugherty

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:
6e54723ab92a28720e5ec0a9d3d660e6

Electronically Signed

Your name: Patricia Daugherty
Signed on: 09/23/2024