

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

James Avellini Medical PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1284-7651
Applicant's File No.	DK22-295824
Insurer's Claim File No.	8696577830000001
NAIC No.	22055

ARBITRATION AWARD

I, Matthew Maroney, 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 08/28/2024
Declared closed by the arbitrator on 08/28/2024

Rachel Stein from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Jerry Marino from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,085.76**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute
This is a claim for EMG/NCV studies performed on the EIP on 8/18/22, following an accident which occurred on 6/13/22.
The respondent partially paid and partially denied this claim based on fee schedule.
The issue is whether the respondent properly partially paid and partially denied this claim based on fee schedule.
4. Findings, Conclusions, and Basis Therefor

My decision is based upon the arguments of representatives for both parties, as well as those documents properly and timely submitted to and contained in the ADR Center for this case, as of the date of this arbitration, unless further precluded or admitted as set forth below.

Comparing the relevant evidence presented, I find in favor of the respondent, and deny this claim in its entirety. My reasoning follows.

The law with respect to a fee schedule defense is clear, well-settled, and set forth below.

When a fee schedule defense is raised, the respondent has the burden to establish that the fees charged by the applicant exceed the amount set forth in the appropriate fee schedule, and must produce competent evidentiary proof to support the defense. *New York Hosp. Med. Ctr. of Queens v. Country-Wide Ins. Co.*, 295 A.D.2d 583, 586 (2d Dept. 2002)

A fee schedule defense must be rejected where the insurer fails to address how the amount charged by the provider was in excess of the fee schedule. *Jesa Medical Supply, Inc. v. Geico Ins. Co.*, 25 Misc.3d 1098, 2009 N.Y. Slip Op. 29386 (N.Y. Civ. Ct. 2009).

However, if an insurer presents sufficient evidence substantiating its denial or fee reduction pursuant to the applicable fee schedule, the burden shifts to the provider of services to rebut the carrier's fee schedule interpretation. *Natural Acupuncture Health, P.C. v. Praetorian Ins. Co.*, 30 Misc. 3d 132A (App Term 1st Dep't 2011).

My analysis of the evidence submitted and arguments made relative to this issue follows below.

The respondent partially paid and partially denied this claim based upon a plain reading of the fee schedule and submitted evidence in the form of specific sections of the CPT Assistant, which specifically states that the applicant healthcare provider cannot bill code 95905 in conjunction with certain other codes that were in fact billed, and in fact are at issue herein, namely 95885 and 95886.

The CPT Assistant constitutes competent medical evidence to support the respondent's defense that the applicant healthcare provider billed in excess of the appropriate fee schedule, and here, the defense properly supports that the respondent was properly partially paid and partially denied based upon the above referenced CPT Assistant's position relative to code 95905.

I find the respondent to have properly shifted the burden on the medical necessity issue back over to the applicant healthcare provider, and it is noted, that there is no competent evidentiary proof offered by the applicant healthcare provider to overcome the fee schedule defense raised by the respondent.

For the reason set forth herein, I find in favor of the respondent, and deny this claim in its entirety.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

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

09/24/2024
(Dated)

Matthew Maroney

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:
4c09980107afa2b98934dd988c2b91e5

Electronically Signed

Your name: Matthew Maroney
Signed on: 09/24/2024