American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RCK Medical Services PC (Applicant)	AAA Case No.	17-24-1333-8955
	Applicant's File No.	M07985,M07986,M07987
- and -	Insurer's Claim File No.	0729495992 2CI
Allstate Insurance Company (Respondent)	NAIC No.	19232

ARBITRATION AWARD

I, Perry Criscitelli, 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 10/14/2024
   Declared closed by the arbitrator on 10/14/2024

   Ashley Andrews-Santillo, Esq. from Munawar Law Firm, PLLC participated virtually for the Applicant

   Steve Khani, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,582.06**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant amended the amount in dispute to $1333.72 acknowledging receipt of payment in the amount of $282.46 as to date of service October 18, 2023 for EIP PH.

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

3. Summary of Issues in Dispute

   Did the Respondent properly reduce Applicant's billing for services pursuant to the applicable fee schedule?

The EIPs in this matter claims injuries as a result of a motor vehicle accident on September 16, 2023. Thereafter on October 18, 2023 and November 27, 2023 the EIPs reportedly underwent medical treatment at Applicant's facility. In support of its claim for reimbursement of these services, Applicant has submitted an assignment of benefits form and NF-3 forms (hereafter referred to as "bills"). The Respondent has reduced and/or denied payment.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the documents in the Electronic Case Folder which is maintained by the American Arbitration Association. This decision is based upon the documents reviewed as well as the arguments made by the parties' representatives at the arbitration hearing.

Respondent has submitted NF-10 denials of claim (hereafter referred to as "denials") acknowledging timely receipts of the subject bills. Accordingly, Applicant has made out a prima facie case for reimbursement as a matter of law. See, Insurance Law § 5106(a); Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D.3d 742 (2nd Dept. 2004).

Respondent must demonstrate by competent evidentiary proof that Applicant's claims were in excess of the appropriate fee schedules, otherwise Respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Co., 11 Misc. 3d.145A, 819 N.Y.S.2d 847 (App. Term 1st Dept. 2006). The Appellate Term, Second Department stated, "after defendant made a prima facie showing that the amounts charged by plaintiffs for claims underlying the first and seventh causes of action were in excess of the fee schedules, the burden shifted to plaintiffs to show that the charges involved a different interpretation of such schedules or an inadvertent miscalculation or error." Cornell Medical PC v. Mercury Cas. Co, 24 Misc. 3d 58, 2009 NY Slip OP 29228.

This hearing involves a series of five bills among three EIPs for services performed on October 18, 2023 and November 27, 2023. As to the bill for November 27, 2023, Applicant submitted charges in the amount of $491.51 and was reimbursed $248.34. As to date of service October 18, 2023, consisting of two bills, Applicant submitted charges in the amount of $491.51 and was reimbursed $248.34. Applicant submitted charges in the amount of $530.80 and was reimbursed $248.34. As to date of service October 18, 2023, consisting of two bills, Applicant submitted charges in the amount of $491.51 and was reimbursed $248.34.

The respective parties presented arguments relative to the change of coding as to 99243 and 99456. The Respondent however, has not provided a detailed fee audit or coder affidavit in support of the reduction of payments. Notably, the Applicant has provided a coder affidavit by Michael Miscoe dated May 26, 2022 addressing the arguments presented by Respondent, addressing the CPT 99456 code argument in paragraph 32 of its coder affidavit.

After hearing both presentations by counsel well versed on these codes, and reviewing the Miscoe coder affidavit, I find in the first instance that the Respondent has not provided sufficient evidence to sustain its burden relative to the reduction of payments. Even absent the necessary coder affidavit or fee audit, the Applicant has provided persuasive evidence to rebut the oral argument made by Respondent's counsel.

Accordingly, I find in favor of the Applicant in the amount as amended.

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**
	RCK Medical Services PC	**10/18/23 - 10/18/23**	**$530.80**	**$248.34**	**Awarded: $282.46**
	RCK Medical Services PC	**10/18/23 - 10/18/23**	**$282.46**		**Awarded: $282.46**
	RCK				

	Medical Services PC	**11/27/23 - 11/27/23**	**$243.17**		**Awarded: $243.17**
	RCK Medical Services PC	**10/18/23 - 10/18/23**	**$282.46**		**Awarded: $282.46**
	RCK Medical Services PC	**11/27/23 - 11/27/23**	**$243.17**		**Awarded: $243.17**
Total			**$1,582.06**		**Awarded: $1,333.72**

B. The insurer shall also compute and pay the applicant interest set forth below. 01/30/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to Insurance Law § 5106 (a), interest accrues on overdue no-fault insurance claims at a rate of 2% per month. A claim is overdue when it is not paid within 30 days after a proper demand is made for its payment (Insurance Law § 5106 [a]; 11 NYCRR 65.15 [g]). The Superintendent's regulation tolls the accumulation of interest if the claimant "does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations" (11 NYCRR 65-3.9 [c]). The Superintendent has interpreted this provision to mandate that the accrual of interest is tolled, regardless of whether the particular denial at issue was timely. That interpretation was upheld by the Court of Appeals in LMK Psychological Servs, P.C. v. State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481 (April 2, 2009). Where no denial of claim is issued in response to a proper demand for payment, the insurer does not benefit from the tolling provision and interest will accrue from the date 30 days after the proper demand for payment is made. Interest that accrues when a denial of claim is not issued within 30 days after the proper demand for payment is made will be tolled upon the issuance of a denial of claim, although such denial is untimely, and the failure to request arbitration or institute a lawsuit within 30 days after receipt of that denial of claim form.

C. Attorney's Fees

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

11 NYCRR 65-4.6 establishes a minimum attorneys' fee and further provides that:

For cases filed on or before February 4, 2015, the "attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the . . . court, subject to a maximum of $850" (11 NYCRR 65-4.6 [e]). The October 8, 2003, opinion letter of the Superintendent interpreted that regulation and stated that the minimum amount of attorneys' fees awarded to an assignee health care provider pursuant to Insurance Law § 5106 is "based upon the aggregate amount of payment required to be reimbursed based upon the amount awarded for each bill which had been submitted and denied. The minimum attorney fee . . . is not due and owing for each bill submitted as part of the total amount of the disputed claim sought in the court action" (Ops Gen Counsel NY Ins Dept No. 03-10-04 [Oct. 2003]). For purposes of calculating attorneys' fees, the Superintendent has interpreted a claim to be the total medical expenses claimed in a cause of action pertaining to a single insured, and not each separate medical bill submitted by the provider. The Insurance Department's interpretation of its own regulation was upheld by the Court of Appeals in LMK Psychological Servs, P.C. v. State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481 (April 2, 2009). Attorneys' fees are therefore to be calculated based on the aggregate of all bills for each insured; and

For cases filed after February 4, 2015, the attorney's fee is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). The attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of $1,360. If the nature of the dispute results in an attorney's fee that could be computed in accordance with the limitations prescribed in both subdivision (c) and this subdivision, the higher attorney's fee shall be payable.

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

10/15/2024
(Dated)

Perry Criscitelli

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:
1f3f1a041f6f6faf397fa28c278955f3

Electronically Signed

Your name: Perry Criscitelli
Signed on: 10/15/2024