

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Quality Orthopedics & Complete Joint Care, PC (Applicant)	AAA Case No.	17-23-1319-6430
	Applicant's File No.	LIP-31068
	Insurer's Claim File No.	3246F398M
- and -	NAIC No.	25178

State Farm Mutual Automobile Insurance
Company
(Respondent)

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (RE)

1. Hearing(s) held on 10/17/2024
Declared closed by the arbitrator on 10/17/2024

Usman Nawaz, Esq. from Law Offices of Ilya E Parnas P.C. participated virtually for the Applicant

Mikel Gjoni, Esq. from Sarah C. Varghese & Associates f/k/a James F. Butler & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,484.16**, 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

EIP (RE), is a 29-year-old female, who was involved in a motor vehicle accident on February 16, 2023. Following the accident, EIP sought medical treatment. On July 12, 2023, EIP underwent a left shoulder arthroscopy.

Applicant's reimbursement claims, for fees associated with the arthroscopy, were partially paid, and the balances denied, based on the fee schedule.

The issue to be determined at the hearing: Whether Respondent's fee schedule defense is sustainable?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing. This Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

EIP (RE), is a 29-year-old female, who was involved in a motor vehicle accident on February 16, 2023. Following the accident, EIP sought medical treatment. On July 12, 2023, EIP underwent a left shoulder arthroscopy.

It is well settled that an Applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the Respondent and that payment of no-fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). I find that Applicant establishes a *prima facie* case of entitlement to No-Fault compensation for its claim. The burden then shifts to the Respondent to prove its fee schedule defense.

Applicant's reimbursement claims, for fees associated with the arthroscopy, were partially paid, and the balances denied, based on the fee schedule.

Fee Schedule

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).

In support of its defense, Respondent has submitted an affidavit from Jennifer Comunale, CPC, dated January 27, 2024. Ms. Comunale provides an analysis regarding the CPT codes billed: 29823 59, 29805 59, 29821 59, 29825 59, and 29999 59, and allows reimbursement for the surgeon and PA, in the total amount of \$3,427.66. Respondent's coder agrees with Applicant's reimbursement claim for code 29823 (\$2,065.91). Ground Rule 5 supports reimbursement for code 29825 at 50% (Multiple Procedure). Codes 29805 59, 29821 59 and 29999 59 are not recommended for reimbursement. A bursectomy is included in code 29823, therefore, reimbursement is \$0.00. Per the CPT Assistant, code 29821 is not to be reported when billed with 29823, unless there is specific documentation of synovitic disease. Here, there is no documentation of this in the operative report. Therefore, reimbursement is \$0.00. Further, as per the complete Global Service Data for Orthopedic Surgery, code 29805 is not to be reported with code 29823, as it is considered to be inclusive to code 29823. Therefore, reimbursement is \$0.00.

Finally, the coder reports that physician assistants will receive 10.7% of the total allowances for the surgical procedures. Based on the foregoing, Respondent's coder concludes that based on the prior over payment by State Farm, no additional reimbursement is owed.

In rebuttal, Applicant does not submit a coder affidavit. At the hearing, Applicant's counsel argued the insufficiency of Respondent's documentary evidence, based on the coder's failure to consider Modifier 59 in her calculations.

Despite Applicant's arguments to the contrary, upon a review of the affidavit by Respondent's fee coder, I find that Respondent has met the burden in support of its fee schedule defense.

Once the insurer makes a prima facie showing that the amounts charged by a provider were in excess of the fee schedule, the burden shifts to the provider to show that the charges involved a different interpretation of such schedule or an inadvertent miscalculation or error. Cornell Medical, P.C. v. Mercury Casualty Co., 24 Misc.3d 58, 884 N.Y.S.2d 558 (App. Term 2d, 11th & 13th Dists. 2009).

No contrary expert documentary evidence is submitted by Applicant.

Despite Applicant's arguments to the contrary, after careful review of the evidence, I am persuaded by the content of Respondent's affidavit, and I find that the fees the Applicant charged for the services in dispute herein

exceeded the relevant fees set forth in the fee schedule. Significantly, Applicant fails to submit any documentary evidence by an expert/fee coder to dispute the substance of Respondent's affidavit. As such, I find that Applicant has failed to refute the insurer's interpretation of the fee schedule. See Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 N.Y. Slip Op. 50040 (U) (App. Term 1st Dept. 2011); Cornell Medical, P.C. v. Mercury Casualty Co., 24 Misc.3d 58, 2009 N.Y. Slip Op. 29228 (App. Term 2d, 11th and 13th Jud. Dists. 2009).

Based on the foregoing, and Respondent's prior payment, I find that no further reimbursement is owed. Applicant's claim, for date of service 7/12/23, is denied.

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 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 Putnam

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

10/20/2024
(Dated)

Nicholas Tafuri

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:
89d28924ab4d0738ae04d994d36c6d

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 10/20/2024