American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC (Applicant)	AAA Case No.	17-24-1351-9021
	Applicant's File No.	ACT24-182025
- and -	Insurer's Claim File No.	054879077
	NAIC No.	36447
Liberty Mutual Insurance Company (Respondent)		

ARBITRATION AWARD

I, Anne Malone, 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 11/14/2024
   Declared closed by the arbitrator on 11/14/2024

   Jared Mallimo, Esq. from The Licatesi Law Group, LLP participated virtually for the Applicant

   Maria Bona from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$2,221.97**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed was amended by the applicant to $1,352.55 to conform to the appropriate fee schedule. Respondent did not agree to this amended amount.

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

3. Summary of Issues in Dispute

   The 33 year old EIP reported involvement in a motor vehicle accident on August 26, 2023; claimed related injury and underwent injection with ultrasonic guidance provided by the applicant May 8, 2024.

The applicant submitted a claim for these medical services, for which partial payment was made pursuant to the respondent's calculation of the correct reimbursable amount pursuant to the New York Workers' Compensation Medical Fee Schedule.

The issue to be determined at the hearing is whether the respondent established its fee schedule defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

The applicant billed a total of $3,110.20 for the services at issue, for which the respondent made partial payment of $888.33 ($579.18 for the services of a PA and $309.15 for the J codes) pursuant to the appropriate fee schedule. At the hearing, the applicant amended the amount claimed to $1,352.55.

To prevail in a fee schedule defense, the respondent must demonstrate by competent evidentiary proof that applicant's claims were in excess of the appropriate fee schedules, or 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 145(A) (App. Term 1st Dept. 2006.)

An insurer fails to raise a triable issue of fact with respect to a defense that the fees charged were not in conformity with the Workers' Compensation fee schedule when it does not specify the actual reimbursement rates which formed the basis for its determination that the claimant billed in excess of the maximum amount permitted. See St. Vincent Medical Services, P.C. v. GEICO Ins. Co., 29 Misc.3d 141(A), 907 N.Y.S.2d 441 (App. Term 2d, Dec. 8, 2010.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and often requires testimony and evidence beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the latter scenario and requires an expert's opinion.

The respondent supported its fee schedule defense, with the affidavit of Gina Ball, R.N. CPC, a medical professional and certified professional coder who

submitted a comprehensive review and analysis and determined, based on the applicable New York fee schedule that the correct reimbursable amount for the services at issue is $888.34.

Regarding the billing of CPT code 76942 for needle placement six separate times by a PA, Ms. Ball determined, based on the CPT Assistant that ultrasonic guidance "may only be reported once, irrespective of the number of trigger point injections performed."

She indicated that no invoice was submitted for the J codes and that they were reimbursed at the usual and customary rate for a total of $309.15 which was included in the total amount paid by the respondent.

The applicant argued that since the respondent did not request an invoice for the J codes, the fee coder's reimbursement based on the usual and customary rate was incorrect.

The applicant submitted the affidavit of Michael Miscoe, CPC, a certified professional fee coder who concluded that J codes "should be reimbursed based on their reasonable charge amount." He did not specify how this amount should be determined.

Regarding CPT code 76942 for guidance for needle placement, Mr. Miscoe references the CPT Assistant and includes this question and answer:

Question: When reporting ultrasound guidance for trigger point injections (20551, 20552), is it appropriate to report multiple units of code 76942 based on the number of injections?

Answer: No, code 76942, Ultrasonic guidance for needle placement (eg, biopsy, aspiration, injection, localization device), imaging supervision and interpretation;, may only be reported once, irrespective of the number of trigger-point injections performed.

I am aware that there are prior arbitration awards which favor applicant and respondents.

However, based on the foregoing, I find that the affidavit of Gina Ball, R.N., CPC was more persuasive in this matter.

Under these circumstances. the respondent established its fee schedule defense.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. 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 CT
SS :
County of Fairfield

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

11/19/2024
(Dated)

Anne Malone

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:
a1bc8d966032bb305c6c7f38580d48a6

Electronically Signed

Your name: Anne Malone
Signed on: 11/19/2024