

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Unicorn Acupuncture, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-24-1354-5490
Applicant's File No. AR24-24598
Insurer's Claim File No. 06681172360000007
NAIC No.

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 12/09/2024
Declared closed by the arbitrator on 12/09/2024

Alek Beynenson, Esq. from The Beynenson Law Firm, PC participated virtually for the Applicant

Jaime Drantch from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$796.27**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$511.14 to conform to the appropriate fee schedule. The 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 43 year old EIP reported involvement in a motor vehicle accident on June 27, 2023; claimed related injury and underwent an office visit on July 3, 2023 and acupuncture treatment provided by the applicant from January 17, 2024 to March 24, 2024.

The applicant submitted a claim for these medical services, partial payment of which was timely made by the respondent based upon its determination of the correct reimbursable amount pursuant to the New York Workers' Compensation Acupuncture 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.

According to the AR-1 the applicant claims that the total amount of the claim at issue is \$840.58 and acknowledged payment by the applicant of \$44.31, leaving a balance of \$796.27.

At the hearing, the applicant amended the amount in dispute to \$511.14. The respondent contended that a total of \$172.68 was due for the acupuncture treatment at issue.

To prevail in its fee schedule defense, the respondent must demonstrate by competent evidentiary proof that the applicant's claims are in excess of the appropriate fee schedule. If the respondent fails to do so, its defense of noncompliance with the New York Workers' Compensation Medical Fee Schedule cannot be sustained. See Continental Medical, P.C. v Travelers Indemnity Co., 11 Misc. 3d 145A (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 expertise beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the former scenario and does not require an expert opinion.

The applicant billed \$57.58 under CT code 99202 for an office visit provided on July 3, 2023. The amount claimed was amended at the hearing to \$46.65. The respondent argued that CPT code 99202 is not included in the New York Workers' Compensation 2018 Acupuncture fee schedule and is therefore not reimbursable.

Based on a plain reading of the applicable fee schedule, I find that the office visit is not reimbursable.

Therefore, the claim for \$46.65 for date of service July 3, 2023 is dismissed with prejudice.

This claim is related to the claim presented at a prior hearing today, in which the applicant, North Shore Family Chiropractic PC billed for chiropractic treatment on the same dates of service as the applicant at issue here billed for acupuncture treatment.

The respondent provided evidence that payment was made to Brooklyn Medical and North Shore Family Chiropractic, PC on the same days as the acupuncture treatment at issue was provided by the applicant in this matter.

At this hearing, the applicant withdrew, with prejudice, the claim for dates of service April 15, 2024 to April 22, 2024 and May 5, 2024 to May 28, 2024, leaving a balance of \$319.09.

This claim includes three bills for acupuncture treatment submitted by the applicant:

Dates of service Amount Billed Amount paid Amount due

(based on fee schedule)

1/17/24 - 1/22/24 \$104.40 -0- \$99.76

2/1/24 - 2/19/24 261.00 -0- 67.35

3/6/24 - 3/24/24 156.60 \$44.31 105.33

The submissions did not include an NF-10 for the bill for dates of service January 17, 2024 to January 24, 2024. The respondent acknowledged that \$99.76 is due for this bill.

The applicant contends that it is entitled to additional reimbursement of \$319.09 for the acupuncture treatment at issue.

Based on a plain reading of the 2018 acupuncture fee schedule, I find that the respondent has established its fee schedule defense.

Accordingly, the applicant is awarded \$272.44 and the remainder of 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Unicorn Acupuncture, PC	07/03/23 - 07/03/23	\$57.58	\$46.65	Denied
	Unicorn Acupuncture	01/17/24 -	\$104.40	\$99.76	Awarded:

	re, PC	01/22/24			\$99.76
	Unicorn Acupuncture, PC	02/01/24 - 02/19/24	\$261.00	\$67.35	Awarded: \$67.35
	Unicorn Acupuncture, PC	03/06/24 - 03/24/24	\$112.29	\$105.33	Awarded: \$105.33
	Unicorn Acupuncture, PC	04/15/24 - 04/22/24	\$104.40		Withdrawn with prejudice
	Unicorn Acupuncture, PC	05/05/24 - 05/28/24	\$156.60		Withdrawn with prejudice
Total			\$796.27		Awarded: \$272.44

B. The insurer shall also compute and pay the applicant interest set forth below. 07/01/2024 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. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 11 NYCRR §65-4.6(d.)

- 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 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.

01/08/2025

(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:
016773cdf15041bbaf329fed9ef36e05

Electronically Signed

Your name: Anne Malone
Signed on: 01/08/2025