American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Diagnostic Assessment Chiropractic P.C (Applicant)	AAA Case No.	17-24-1345-5486
	Applicant's File No.	OS-82147
- and -	Insurer's Claim File No.	32-59P1-63C
	NAIC No.	25143
State Farm Fire & Casualty Company (Respondent)		

ARBITRATION AWARD

I, Stacey Erdheim, 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: Claimant

1. Hearing(s) held on 01/15/2025
   Declared closed by the arbitrator on 01/15/2025

   John Faris from Law Office of Olga Sklyut P.C. participated virtually for the Applicant

   Rosemary Nash from Sarah C. Varghese & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$729.31**, 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 arbitration arises out of treatment of a Claimant (RR) for injuries sustained in a motor vehicle accident occurring on 11/24/23. Applicant seeks reimbursement for the balance of services rendered 12/7/23 in the amount of $729.31. Respondent issued a timely denial based on fee schedule. The denial states:

   : Per New York Workers' Compensation Chiropractic Fee Schedule General Ground Rule 2, "Procedures Listed Without Specified Relative Value Units", for any procedure where the unit value is listed in the schedule as "BR", the chiropractor shall establish a unit value consistent in relativity with other unit values shown in the schedule. The ground rule also states that the insurer shall review all submitted "BR" unit values to ensure that the relativity consistency is maintained. The amount allowed is based on

documented time, skill, and equipment. Per New York Workers' Compensation Chiropractic Fee Schedule General Ground Rule 10, "a chiropractor may only use CPT codes contained in the Chiropractic Fee Schedule for billing of treatment. A chiropractor may not use codes that do not appear in the Chiropractic Fee Schedule." For three or more parts, whether contiguous or remote, the charge shall be the greater fee plus 75% of the lesser fees. (New York Workers' Compensation Medical Fee Schedule/Chiropractic Fee Schedule radiology multiple diagnostic procedures ground rule(s)

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder (ECF) as of the date of the hearing in this matter and have considered all documents contained therein for the purpose of rendering this award. No additional documentation was submitted by either party at the time of the hearing.

The 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 Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. 11 NYCRR 65-4.5(o)(1). (Regulation 68-D.)

This arbitration arises out of treatment of a Claimant (RR) for injuries sustained in a motor vehicle accident occurring on 11/24/23. Applicant seeks reimbursement for the balance of services rendered 12/7/23 in the amount of $729.31. Respondent issued a timely denial based on fee schedule. The denial states:

: Per New York Workers' Compensation Chiropractic Fee Schedule General Ground Rule 2, "Procedures Listed Without Specified Relative Value Units", for any procedure where the unit value is listed in the schedule as "BR", the chiropractor shall establish a unit value consistent in relativity with other unit values shown in the schedule. The ground rule also states that the insurer shall review all submitted "BR" unit values to ensure that the relativity consistency is maintained. The amount allowed is based on documented time, skill, and equipment. Per New York Workers' Compensation Chiropractic Fee Schedule General Ground Rule 10, "a chiropractor may only use CPT codes contained in the Chiropractic Fee Schedule for billing of treatment. A chiropractor may not use codes that do not appear in the Chiropractic Fee Schedule." For three or more parts, whether contiguous or remote, the charge shall be the greater fee plus 75% of the lesser fees. (New York Workers' Compensation Medical Fee Schedule/Chiropractic Fee Schedule radiology multiple diagnostic procedures ground rule(s)

It is settled Law that to recover assigned first party No-Fault benefits, a provider establishes a prima facie entitlement to an award by proof of submission of statutory claim forms setting forth the fact and amounts of the losses sustained, and a payment of No-Fault benefits was overdue. (*See Insurance Law 5106 (a); Mary Immaculate*

Hospital v. Allstate Ins. Co., 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Amaze Medical Supply, Inc. v. Eagle Ins Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]). Additionally, acknowledgment of receipt of the bill in its denial is proof of submission of the claim. (*See Careplus Med. Supply Inc. v. State-wide Ins. Co., 11 Misc 3d 29, 812 NYS2d 736 [App Term, 2nd & 11 Jud Dists 2005*]). Applicant has met its burden in the case at hand.

Respondent submitted a coder affidavit from Mathew Kenyon, CPC. He noted that CPT code 76999 is designated as a "by report" code. He noted that chiropractors are required to bill codes specific to their fee schedule under the new fee schedule. He stated that he did not agree that codes 76800, 76881, 76004, 76536, or 76856 could be utilized. He stated that based on the documentation, the comparable CPT code in the Chiropractic Fee Schedule would be 72084, radiologic examination, spine, entire thoracic and lumbar including skull, cervical, and sacral spine. He noted that this code is a relative code for diagnostic radiological services and is listed in the Chiropractic Fee Schedule. He also noted that CPT code 73030 would be applied for the multi view ultrasound performed on the shoulder and surrounding tissues. He recommended reimbursement of $198.41 based on these codes and the RVUs of 3.64 and 1.79.

Respondnet notes that they previously reimbursed Applicant $165.05 and therefore only owe $33.36.

Applicant's relies on a document from Yelena Davydking. She argues that 76999 shoulde be cross walked to 76800, 76881, 76604, 76536 and 76856. According to her analysis, applicant billed properly.

In weighing the competing evidence and carefully considering the arguments of the parties, I find that Respondent has met its burden. I find Mr. Kenyon's coder affidavit more credible and more persuasive than Applicant's submission.

Accordingly, based on Respondent's own affidavit, I find that Applicant is entitled to further reimbursement of $33.36.

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**	**Status**
	Diagnostic Assessment Chiropractic P.C	**12/07/23 - 12/07/23**	**$729.31**	**Awarded: $33.36**
Total			**$729.31**	**Awarded: $33.36**

B. The insurer shall also compute and pay the applicant interest set forth below. 04/26/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim arose from an accident that occurred on or after April 5, 2002, interest shall be paid, at the rate of 2% per month, simple, from the arbitration filing date and ending with the date of payment of the award

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6

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 Suffolk

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

01/17/2025
(Dated)

Stacey Erdheim

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:
f6dc0b541fda1548e940007bcc46fbde

Electronically Signed

Your name: Stacey Erdheim
Signed on: 01/17/2025