

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

First Hand Physical Therapy PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-24-1336-1817

Applicant's File No. DK23-425381

Insurer's Claim File No. 0708718804

NAIC No. 19232

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 01/22/2025
Declared closed by the arbitrator on 01/22/2025

Henry Guindi, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Adva White, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,207.07**, 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

The 22 year old EIP reported involvement in a motor vehicle accident on March 31, 2023; claimed related injury and underwent physical therapy treatment provided by the applicant from April 13, 2023 to August 30, 2023. The claim contained billing for PPE supplies/services for each date of service.

The applicant submitted a claim for the physical therapy treatment, for which the respondent made payment in full pursuant to the applicable fee schedule.

The respondent made partial payment of the charges for PPE supplies/services after May 11, 2023 pursuant to the allowable fee schedule based on the Public

Health Emergency requirements and denied the remainder of the charges after this expired.

The issue to be determined at the hearing is whether the respondent established its fee schedule defense for the PPE supplies and services billed after May 11, 2023.

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.

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.) Billing for

PPE for all dates of service

The applicant billed a total of \$984.00 under CPT code 99072 for PPE supplies and services provided on each date of service. The respondent made partial payment of these charges billed from April 13, 2023 to May 12, 2023 and denied payment for the remainder of charges for PPE and asserts that these supplies are not reimbursable. The applicant contends that these supplies were necessary to treat the EIP due to the COVID-19 pandemic and are therefore reimbursable as billed.

According to the OGC opinion letter dated January 1, 2007 regarding No Fault Health Service Reimbursement, only qualifying professional health services licensed under New York Law and provided to the claimant in the treatment of his/her injuries are reimbursable in no-fault. See also Ground Rule 17 of the New York State Worker's Compensation Physical Medicine Fee Schedule.

The applicant did not submit any documentation to refute the respondent's fee schedule defense.

I find that the applicant is not entitled to charge for the PPE supplies/services under CPT code 99072 after May 17, 2023. The assignee is only entitled to the rights to reimbursement allowed to the assignor. See Rubin v. Empire Mut. Ins. Co., 25 N.Y.2d 426 at 429. CPT code 99702 is a new code adopted by the AMA during the COVID pandemic which is not a separately covered expense. Medicare has barred reimbursement for these services and views PPE supplies/services as a general expense incurred in running a medical office like, for example hand sanitizing gels, paper cloth covers utilized on patient examining tables, cleaning supplies, gloves, face shields, face masks, etc.) used generally in a medical office setting and not as a separate supply provided to the patient. CMS has stated that payment for the items/services described by CPT code 99072 is "always bundled into payment for other services and payment for them is subsumed by the payment for the services to which they are incident." Finally, CPT code 99072 is not contained in the New York Workers' Compensation Medical Fee Schedule and is therefore not reimbursable as charged.

Based on the foregoing, the respondent has established its fee schedule defense regarding reimbursement for the PPE charges at issue.

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.

01/23/2025

(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:
6feee840f846b8a792da640364e601af

Electronically Signed

Your name: Anne Malone
Signed on: 01/23/2025