

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Functional Rehabilitation Medicine, PC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1317-3305

Applicant's File No. DK23-391352

Insurer's Claim File No. 0717320444

NAIC No. 29688

ARBITRATION AWARD

I, Gary Peters, 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: assignor

1. Hearing(s) held on 01/17/2025
Declared closed by the arbitrator on 01/17/2025

Evan Polansky from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Adina White from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$895.83**, 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 Assignor was a 26 year old female who was a restrained passenger in a motor vehicle and involved in an accident on 6/10/23.

Applicant is seeking payment for medical services/diagnostic testing wherein the claim was partially denied by the Respondent based on a fee schedule dispute.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using the Electronic Case Folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the record of the hearing and I have reviewed the documents contained therein. Any documents submitted after the hearing or at the hearing that have not been entered in the Electronic Case Folder as of the date of this award, will be listed immediately below this language and forwarded to the American Arbitration Association at the time this award is issued for inclusion.

As stated above, the Assignor was a 26 year old female who was a restrained passenger in a motor vehicle involved in an accident on 6/10/23. She sustained multiple bodily injuries to her head, neck and back and came under the care of various medical providers.

On 7/19/23, the Assignor was evaluated by Dr. Marc Parnes. After a complete physical examination, recommendations were made for EMG/NCV studies of the upper and lower extremities. The findings were consistent with evidence of left L4-5 and C5-6 radiculopathy.

As stated above, the Respondent paid a portion of the claim for the EMG/NCV studies and denied the balance based on a fee schedule dispute.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

I find that Applicant established a prima facie case.

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). If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims were in excess of the appropriate fee schedules, defendant's defense of noncompliance with the appropriate fee schedules cannot be sustained. See, *Continental Medical PC v. Travelers Indemnity Co.*, 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't, per curiam, 2006).

On behalf of the Respondent, a Fee Code Report was provided from Carolyn Mallory, a Certified Professional Coder.

The Fee Code Report referenced another claim for the same services performed for a different person. The Applicant in the instant case billed in the same amount of \$1,165.22. Respondent's expert maintained that the proper amount of reimbursement would be \$291.09. As the sum of \$269.39 was previously paid, Respondent conceded that Applicant is owed an additional \$21.70.

Ms. Mallory analyzed the billing as follows:

Bill					Audit		
					Findin"		
	Date of Service	CPT Code Submitted	Submitted Amount	CPT Code Definition	Correct CPT Code	Correct Reimbursement	Rationale
1	7/17/2023	95886-26	\$404.50	Needle electromyography, each extremity, with related paraspinal areas, when performed, done with nerve conduction, amplitude and latency/velocity study; complete, five or more muscles studied, innervated by three or more nerves or four or more spinal levels (List separately in addition to code for primary procedure)	n/a	\$0.00	See Summary
				Needle electromyography, each extremity, with related paraspinal areas, when performed, done with nerve conduction, amplitude and latency/velocity study; complete, five or more muscles			

2	7/17/2023	95886-26	\$404.50	studied, innervated by three or more nerves or four or more spinal levels (List separately in addition to code for primary procedure)	n/a	\$0.00	See Summary
3	7/17/2023	95905-26	\$21.71	Motor and/or sensory nerve conduction, using preconfigured electrode array(s), amplitude and latency/velocity study, each limb, includes F-wave study when performed, with interpretation and report	95905-26 x2	\$21.71	See Summary

4	7/17/2023	95905-26	\$21.71	Motor and/or sensory nerve conduction, using preconfigured electrode array(s), amplitude and latency/velocity study, each limb, includes F-wave study when performed, with interpretation and report	95905-26 x2	\$21.71	See Summary
5	7/17/2023	95923-26	\$65.13	Testing of autonomic nervous system function; sudomotor, including 1 or more of the following:	95923-26	\$65.13	See Summary
				Quantitative sudomotor axon reflex test (QSART), silastic sweat imprint, thermoregulatory sweat test, and changes in sympathetic skin potential			

6	7/17/2023	95923-26	\$65.13	Testing of autonomic nervous system function; sudomotor, including I or more of the following: quantitative sudomotor axon reflex test (QSART), silastic sweat imprint, thermoregulatory sweat test, and changes in sympathetic skin potential	n/a	\$0.00	See Summary
7	7/17/2023	99243-25	\$182.54	Office Consultation	99243 25	\$182.54	See Summary
		Total	\$1165.22		Total	\$291.09	

95886 -26 x2 - \$0.00

- CPT Assistant March 2013 / Volume 23 Issue 3, Pages 3 & 4 indicates that CPT 95905 should not be reported in addition to CPT 95885, 95886 or 95907 -95913.

Both providers have submitted CPT code 95905 indicating preconfigured electrodes were used. If preconfigured electrodes were not used then neither provider submitted the charges correctly. The only way to know if preconfigured electrodes were truly used is if they stated "preconfigured electrodes" or if someone were to ask them.

95905 -26- RVU = 24.52

- $24.52 \times 11.07 = 271.44 \times 2 \text{ units} = 542.87$
- The technical/professional component is 4/96.
- $542.87 \times 4\% = \$21.7$

95923 -26 -RVU = 20.29

- $20.29 \times 11.07 = 224.61$
- The technical/professional component is 29/71.
- $224.61 \times 29\% = \$65.13$

95923 -26-- \$0.00 Multiple units are not appropriate.

- CPT Assistant Knowledge Base Inquiry #1371 indicates that CPT 95923 can only be reported once based on the description.

- 95923 - Testing of autonomic nervous system function; sudomotor, **including I or more of the following:** quantitative sudomotor axon reflex test (QSART), silastic sweat imprint, thermoregulatory sweat test, and changes in sympathetic skin potential

99243 -RYU = 16.49 15.06 x 16.49 = \$248.34 (The provider only submitted \$182.54.)

The providers on both bills only submitted CPT code 95905 two times both with one unit. These lines were reimbursed correctly based on how the providers submitted the charges. The notes support 2 units on each line. One unit for each extremity.

The New York Fee schedule allowed amount is \$291.09.

After reviewing all the evidence, I find the Respondent's Fee Coder has provided a comprehensive analysis of the claim, albeit referencing another person/EIP.

Accordingly, for the reasons as stated herein, Applicant is awarded payment in the sum of \$21.70.

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
	Functional Rehabilitation	07/19/23 -	\$895.83	Awarded:

	Medicine, PC	07/19/23		\$21.70
Total			\$895.83	Awarded: \$21.70

B. The insurer shall also compute and pay the applicant interest set forth below. 09/21/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest to be 2% per month simple, not compounded on a pro rata basis using a 30 day month. Respondent shall compute and pay Applicant interest from the day of filing of arbitration to 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 th Applicant an attorney fee in accordance with 11 NYCRR 65-4.6(d) or "As this matter was filed on or after February 4, 2015, this case is subject to the provisions promulgated bt the Departmenet of Financial Services in the Sixth Amendment to 11NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the the Applicant an attorney fee in accordance with the newly promulgated 11 NYCRR 65-4.6(d). This amendment takes into account that the the maximim attorney fee has been raised from \$850.00 to \$1360.00

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 Nassau

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

02/15/2025
(Dated)

Gary Peters

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:
a17d82a053c0d929a0df8eefd6ae190

Electronically Signed

Your name: Gary Peters
Signed on: 02/15/2025