American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Glenmore Medical PC (Applicant)	AAA Case No.	17-24-1336-7336
	Applicant's File No.	BT23-224052
- and -	Insurer's Claim File No.	9951102
	NAIC No.	24309
Hereford Insurance Company (Respondent)		

ARBITRATION AWARD

I, Donna Ferrara, 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: Injured person JA.

1. Hearing(s) held on 02/18/2025
   Declared closed by the arbitrator on 02/18/2025

   James DiCarlo, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

   James Kuroly, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$8,620.77**, was AMENDED and permitted by the arbitrator at the oral hearing.
   Applicant reduced the amount in dispute to $5,453.84, pursuant to the New York State Workers' Compensation Fee schedule.

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

3. Summary of Issues in Dispute

   The dispute arises from the underlying motor vehicle accident of 7/21/22, wherein a 50 year old man was injured. Applicant submitted the bills for the surgeon and physician

assistant (PA) fee for shoulder arthroscopy for the injured person on date of service 2/7/23, to Respondent and Respondent requested verification.

Accordingly, the issue to be determined is whether Applicant substantially complied with the verification request.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the file regarding this matter contained in the Modria Center record of the case maintained by the American Arbitration Association. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.

"[A] plaintiff demonstrates prima facie entitlement to summary judgment by submitting evidence that payment of no-fault benefits are overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501, 14 N.Y.S.3d 283, 286 (2015).

VERIFICATION

Applicant's counsel argued that there were two responses on 6/26/23 and 9/27/23. There was no denial so there would be additional interest.

Respondent's counsel argued there is outstanding verification; Respondent sent letters on 3/20/23 and 5/1/23; there was a response narrative, but a number of the items were not provided. The arbitration is premature.

By letters dated 3/20/23 and 5/1/23, Respondent requested verification of Applicant, specifically:

Post-operative report from the surgeon for visits after 2/7/23.

Signed and completed procedure and anesthesia consent forms.

Pre-operative assessment/history and physical, pre and post procedure nursing notes, recovery room records and discharge summary from the surgical facility.

Respondent copied Global surgery center, the injured person and the injured person's attorney.

By letter dated 6/26/23, to Respondent, Applicant provided the post-operative report. Applicant stated

> Please be advised that our client, Glenmore Medical PC, does not have possession or control of the procedure consent form, anesthesia consent form, anesthesia notes, pre-operative history, recovery room records, discharge summary or nurse notes from the claimant's date of surgery. Therefore, our client is not the proper party for this request. Kindly direct your inquiry to surgical center where the procedure was performed, Global Surgery Center.

By letter dated 7/26/23, Respondent advised Applicant of missing/incomplete verification.

Respondent stated:

We are in receipt of your letter of 6/26/23 and Dr. Daly's narrative report dated 2/6/23. The submitted narrative report is not the post-operative report from the surgeon for office visits after 2/7/23. Please submit same.

By letter dated 9/27/23, to Respondent, Applicant advised that there were no office visits after 2/7/23.

By letter dated 10/31/23, Respondent advised Applicant of missing/incomplete verification.

Respondent stated:

We are in receipt of your letter of 9/27/23. If there were no office visits after 2/7/23 we will need a signed letter from the surgeon that states same.

Applicant stated that there were no office visits after 2/7/23. Yet, Respondent requested a signed letter from the surgeon attesting to information which was already provided.

I find that Applicant was responsive to Respondent's verification request and that Applicant substantially complied with the verification request.

I find in favor of Applicant.

FEE SCHEDULE

Respondent raised a fee schedule defense.

Once the Applicant has established its prima facie case, the burden shifts to the Respondent to come forward with competent evidentiary proof to support its fee schedule defense. Robert Physical Therapy, P.C. v. State Farm Mut. Auto Ins. Co. 13 Misc.3d 172(Civ. Ct. Kings Co. 2006).

The insurer has the burden of proving that the fees charged were excessive and not in accordance with the Worker's Compensation fee schedule. St. Vincent Medical Care PC v. Countrywide Insurance Company, 26 Misc. 3d 146 (A), 907 NYS 2d 441 (App. Term 2d, 11th and 13th Dists. 2010). If the insurer fails to demonstrate, by competent evidentiary proof, that the claims were excess of the appropriate fee schedule, the defense of noncompliance cannot be sustained. See, Continental Medical PC v Travelers Indemnity Company, 11 Misc.3d 145(a), 819 NYS 2d 847 (App Term 1st Dept. 2006).

In support of their position, Respondent submitted a fee affirmation by Carolyn Mallory, CPC. She referred to Ground rule 5-- "when multiple procedures, unrelated to the major procedure and adding significant time a complexity are provided at the same operative session, payment is for the procedure with the highest allowance plus half of the lesser procedures." She allowed full payment for code 29823, and 50% payment for codes 29821 and 29825, and no allowance for code 29999. Regarding 29999 she said ground rule 3 would apply; that with BR codes the physician shall establish a unit value consistent with other unit values. The operative note indicates code 29999 was used for bursectomy, which debridement of inflamed bursa in the subacromial joint space would be reported using code 29823 and this code has already been submitted. The NY fee schedule amount is $4,511.17 for the surgeon and the PA.

In support of their position, Applicant submits a fee coder affirmation by Naira Margaryan, CPC. She states Ms. Mallory incorrectly argues that code 29999 is included in the debridement, but she overlooks that bursectomy and debridement are two different procedures and should be analyzed separately. In this case, Dr. Daly did not state that he debrided the bursa. Rather, he specifically noted that he performed a complete removal of the inflamed bursa. This differentiates from the debridement, which Dr. Daly explains is only a partial removal of muscle or cartilage. See the attached letter from Dr. Daly. This distinction is not addressed by Ms. Mallory. Thus, code 29999, billed for a bursectomy, is a separate procedure and should be reimbursed as such. For the surgeon's bill, she allows 100% of code 29823 and 50% for codes 29821, 29825, and 29999. She states Code 29999 should be analyzed as a "by report" code and utilized when there is no specific CPT code for the procedure performed. In this case, code 29999 was billed for a bursectomy as per the Operative Report. She refers to a letter by Dr. Daly, the surgeon herein. Dr. Daly said a bursectomy may be

compared to 29825(lysis and resection of adhesions) but is slightly reduced complexity. She states that Dr. Daly estimated the RVU of the bursectomy to be 7.11 due to the slightly reduced complexity compared to a lysis and resection of adhesions. Thus, an RVU of 6.76 gives code 29999 a reimbursement rate of $1,703.17 when multiplied by the same conversion factor. Because the multiple procedure reduction rule applies to CPT code 29999, it is reduced to $851.56. Applying the 10.7% reduction results in a fee amount of $91.12 for code 29999-83. Based on the fee schedule calculations and the attached documents, the total fee schedule amount for the surgical services performed by Dr. Daly is $5,453.84.

In his letter, Dr. Daly stated he performed an arthroscopic surgery on the left shoulder of the injured person. This included a subacromial bursectomy procedure. This separate and identifiable procedure involves an examination of the subacromial space, which demonstrated inflammation of the subacromial bursa. Utilizing a radiofrequency ablation device and mechanical instruments, he removed the inflamed bursa. There is no specific CPT code for this procedure; therefore, he submitted code 29999, unlisted procedure, arthroscopy. He believes this procedure may be reasonably compared to the existing code 29825, lysis and resection of adhesions, with or without manipulation. The fee schedule amount for code 29825, which has a relative value unit (RVU) of 8.18, is $2,060.87. He estimated the charge for the unlisted procedure to be reimbursed at a lower RVU because of the reduced complexity and skill necessary to perform a bursectomy as compared to 29825 (lysis and resection of adhesions). He therefore charged $1,703.17 for this procedure.

Based on an analysis of both fee coder audits and the letter by Dr. Daly, I find for Applicant. As indicated above, the fee audit by Ms. Margaryan and letter by Dr. Daly explain the reasons why they determined the proper amount for code 29999. I find that the surgeon's explanation, as indicated above, sufficient to establish the justification for code 29999 for payment.

I find that Applicant has rebutted Respondent's fee coder.

The arbitration claim is granted.

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
	Glenmore Medical PC	**02/07/23 - 02/07/23**	**$7,787.51**	**$4,926.68**	**Awarded: $4,926.68**
	Glenmore Medical PC	**02/07/23 - 02/07/23**	**$833.26**	**$527.16**	**Awarded: $527.16**
Total			**$8,620.77**		**Awarded: $5,453.84**

B. The insurer shall also compute and pay the applicant interest set forth below. 10/27/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to Insurance Law §5106(a), interest accrues on overdue no-fault insurance claims at a rate of 2% per month. A claim is overdue when it is not paid within 30 days after a proper demand is made for its payment including verification of all relevant information requested pursuant to section 65-3.5 LMK Psychological Services, P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217, 223, 879 N.Y.S.2d 14, 16 (2009). In the instant case, **Applicant complied with Respondent's verification request by 9/27/23, by providing the documentation requested. Payment became overdue on 10/27/23, so interest would accrue as of that date.** In calculating interest, the date of accrual shall be excluded from the calculation. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.") Where a motor vehicle accident occurs after Apr. 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a); Gokey v. Blue Ridge Ins. Co., 2009 NY Slip Op 50361(U), 881 N.Y.S.2d 363 (Table), 2009 WL 562755 (Sup. Ct. Ulster Co., Henry F. Zwack, J., Jan. 21, 2009).

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance regulation 68-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 NY
SS :
County of Suffolk

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

02/20/2025
(Dated)

Donna Ferrara

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:
96bbafc93af7c9c4b7999331322c470e

Electronically Signed

Your name: Donna Ferrara
Signed on: 02/20/2025