American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Medical Monitoring PC (Applicant)	AAA Case No.	17-24-1361-8312
	Applicant's File No.	none
- and -	Insurer's Claim File No.	0709414494 VCB
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Giovanna Tuttolomondo, 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 02/13/2025
   Declared closed by the arbitrator on 02/13/2025

   Michael Galeno, Esq. from Dino R. DiRienzo Esq. participated virtually for the Applicant

   Michael Rago, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$12,123.12**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant amended the amount in controversy to $ 2,959.72 to reflect an amount which it believes to be in conformity with the applicable fee schedule(s).

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

3. Summary of Issues in Dispute

   The Assignor, CA, now a 56-year-old male, was the driver of a motor vehicle involved in an accident on April 7, 2023. Thereafter, the Assignor sought medical attention for the injuries sustained in the accident. At issue in this case is a claim totaling $ 2,959.72,

representing the balance, after partial payment, for transforaminal lumbar interbody fusion["TLIF"]/**monitoring** performed on the Assignor on April 4, 2024. Respondent raises a fee schedule defense. The issue presented is whether Respondent validates this defense. *It was represented at the hearing of this matter that the policy of insurance is not exhausted.

4. Findings, Conclusions, and Basis Therefor

The decision in this case is based upon the oral arguments of the parties' representatives at the video/Zoom hearing and upon my review of the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association. I have reviewed the documents in MODRIA as of the date of closing of this file and incorporate, and rely upon, said documents in making my decision.

It is the insurer's burden to come forward with "competent evidentiary proof" supporting its fee schedule defenses. Robert Physical Therapy, P.C. v. State Farm Mut. Auto. Ins. Co., 13 Misc. 3d 172, 822 N.Y.S.2d 378 (Civ. Ct. Kings. Co. 2006).

In support of its fee schedule defense, Respondent submits the assessment by Carolyn Mallory, CPC, who concludes that Applicant was overpaid for its services. The dispute centers on service code 95941, which is a By Report Code. Ms. Mallory states in pertinent part that in the case of By Report codes:

> "[T]he physician shall establish a unit value consistent in relativity with other unit values shown in the schedule. The ground rules also state 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.
>
> The ground rule indicates the physician shall establish a unit value consistent in relativity with other unit values shown in the schedule.
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> The provider has charged $13745.10 which would be a relative value of 413.88 per unit (13745.10/ 11.07 = 1241.65).
>
> There is nothing in the fee schedule with a relative value of 413.88."

Ms. Mallory assigns an RVU of $ 6.66. She adds:

> "The provider has submitted three units of 95941 which would be equal to 12 units of 95940. The provider i[s] outside of the operating room or is monitoring more than one case at a time. CPT code 95940 is for monitoring in the operating room, one on one. The relative value for remote monitoring would not be higher than the physician physically being in the operating room spending one on one time with the patient. +95941 - RVU = 6.66 11.07 x 6.66 = $73.7262 x 12 units = $884.71 I am only using the relative value of the CPT code 95940 and

> allowing it at 12 units x the relative value. I am not saying it is the same CPT code. In following ground rule #3 I have found that the relative value of 6.66 x 12 units is most consistent in relative value with other codes in the fee schedule."

In challenge to Ms. Mallory's assessment, Applicant submits the evaluation by Priti Kumar, CPC, who advocates that cross walking code 95941 to 95940 is contrary to the intent of the fee schedule drafters, who assigned an RVU to one code but not to the other in a section of the fee schedule where both codes are listed together.

Ms. Kumar further advances that the process, time and skill involved in the services are more intricate than as described by Ms. Mallory. She relates that the services represent continuous intraoperative neurophysiology monitoring *outside* the operating room [remote or nearby] and data is collected from the operating room continuously on-line in real time via a secure data link. Ms. Kumar further notes that 95940 represents the circumstance where monitoring is performed *inside* the operating room.

I note that Ms. Mallory presents an Addendum addressing Ms. Kumar's position. Both parties also submit Arbitration decisions in their respective favors. I also reviewed my previous decision in an unrelated matter which involved similar but not identical facts [and a fee schedule audit which I found to be conclusory] and in turn, is distinguishable.

At the hearing, Respondent's counsel underscored that Ms. Mallory does not discount that 95940 and 95941 are diverse codes in relation to inside versus outside monitoring. Rather, counsel advocated, Ms. Mallory seeks to establish the code closest in description and RVU that may be assigned for the service, given that Respondent is charged with the task of finding the code most consistent in relative value to the services in controversy.

Applicant's counsel countered that Ms. Mallory must establish that the process, time and skill involved is the same for both 95940 and 95941 and inside versus outside monitoring and that Respondent should have utilized the verification process. Counsel advocated that Ms. Mallory does not meet her burden of production.

Having considered dueling position, I am persuaded by Ms. Mallory's position. Ms. Mallory, in her Addendum states in relevant part:

> "I have used the relative value of CPT 95940. I did not indicate that CPT 95940 was the correct CPT code to use. I have followed ground rule #3 and found a relative value similar based on ground rule #3. She has not explained as to why following ground rule #3 and finding a relative value within the fee schedule was improper and she has not herself indicated how she determined the billed amount to be similar to other codes within the fee schedule similar in relative value. Ground Rule #3 on page 11 in the Introduction and General Guideline section of the 2018 Medical fee Schedule would apply. Per New York Workers' Compensation fee schedule General Rule #3 titled "Procedures without Specified Unit Values", for any procedure where the unit value is listed in the schedule as "BR", the physician shall establish a unit value consistent in relativity with other unit values shown in the schedule. The ground rules also state 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. The ground rule indicates the physician shall establish a unit value consistent in relativity with other unit values shown in the schedule. In submitting a charge of $13,745.10 they have indicated that they feel the relative value would be 413.89 RVU's per unit of 95941. There is nothing in the fee schedule even close the having that relative value and clearly ground rule #3 in using a value consistent in relativity with other unit values was not followed. I have used the relative value of 95940 because it is consistent in relativity with other unit values in the fee schedule.
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> *
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> I agree that the correct CPT code is 95941. I never said that it was not the correct CPT code. Again, I followed ground rule #3."

Ms. Mallory notes that verification was not required because there was no uncertainty regarding the services performed and the dispositive factor in a fee schedule determination is essentially found in the fee schedule itself. I find that persuasive points raised in Ms. Mallory's Addendum merits a denial of the balance sought herein.

My determination aligns with that of my colleague, Arbitrator Josh Youngman, who, in AAA Case Number 17-22-1265-3317, addressed a similar [even if not identical] issue and determined in pertinent part:

> "Ms. Afonso, however, fails to provide a persuasive explanation of why intraoperative monitoring done in the surgical facility would be assigned a relative value of 6.66 while intraoperative monitoring done from a remote location would be assigned a relative value of 236.68. Ms. Afonso further fails to provide a persuasive summary of how the monitoring done remotely is so different than that done in the operating room to justify the assignment of a relative value that is over thirty-five (35) times that assigned to CPT code 95940. Further, I do not find the letter submitted from Mark L. Ritch, DO, PA. to be persuasive. I find Dr. Ritch's statements, in fact, to support the assignment of the relative value from CPT code 95940. Dr. Ritch states when he is inside the operating room, "a technologist applies the electrodes of a Cascade Pro unit to the patient prior to the surgery." Dr. Ritch then states when he is outside of the operative room he has a "live remote connection to the Cascade Pro unit, which provides me with real-time live video representation from the unit as well as a high-quality bi-directional live connection to the staff at the operating room, allowing me to communicate with the surgeon at any time." What Dr. Ritch does not state, however, is how that scenario would be any different were he located inside the operating room, or why he would not be able to "communicate with the surgeon at any time" if he were in the operating room. Dr. Ritch further fails to provide a persuasive analysis to justify the assignment of a relative value that is over thirty-five (35) times that assigned to CPT code 95940. I have also reviewed the awards submitted by the applicant and for the reasons referenced above I disagree with the reasoning contained therein."

Similarly, my colleague, Arbitrator Greta Vilar, in AAA Case Number 17-24-1361-9993, determined in controlling part:

> "Having reviewed the evidence before me I am persuaded by the respondent on this issue. I am not persuaded by the applicant's argument that monitoring from inside the operating room versus outside the operating room is so different as to entitle an applicant to four times the reimbursement for remote monitoring as is allowed for bedside monitoring. The applicant's coder provides an extensive list of requirements and qualifications it argues are necessary to perform monitoring under code 95941. However, the respondent's coder argues that the same types of requirements and qualifications are necessary regardless of whether monitoring is inside of or outside of the operating room. Therefore, I am unpersuaded by this portion of the applicant's argument. The applicant also argued that it is illogical to utilize the RVUs for code 95940 in order to calculate reimbursement for code 95941 since the fee schedule splits them into separate codes and explicitly assigns a set RVU for one and assigns "by report" status to the other. The applicant argues that therefore, it must be intended that code 95941 is entitled to additional reimbursement by definition. I disagree. There is a notable difference between the descriptions of the two codes that I find explains the reason why 95941 is a "by report" code which may be entitled to additional reimbursement under certain circumstances. Code 95940 corresponds to monitoring in the operating room, one on one requiring personal attendance, each 15 minutes. In contrast, code 95941 corresponds to intraoperative monitoring from outside of the operating room or for monitoring more than one case while in the operating room, per hour. Therefore, it makes sense that code 95940 would have a set, assigned RVU. Code 95941 presents a possible scenario in which one person could be monitoring multiple procedures at once thereby becoming entitled to additional reimbursement. The "by report" status seems to allow for that scenario which it does not appear was the case herein. The applicant has presented no credible argument for why remote monitoring should be entitled to be reimbursed at such a greater rate than bedside monitoring."

Finally, my colleague, Arbitrator Mitchell Kleinman, in AAA Case Number 17-24-1335-4915, stated:

> "Ms. Kumar listed the costs associated with remote monitoring including equipment, travel expenses, salaries, and liability insurance. In her opinion, the service was properly billed. After careful consideration and review, I find the Respondent's affidavit to be more persuasive, particularly in its discussion of the billing based on time units. The Applicant's affidavit criticizes Ms. Adesheila's affidavit, but does not convincingly support the rate of reimbursement that it chose to use and how it was calculated. The Respondent's affidavit meets their burden by providing a convincing analysis and reasoning for the RVU that is used to reimburse the provider. The provider's affidavit does not contain enough specific information that persuasively supports the reimbursement rate it chose to bill the insurer. I find the affidavit submitted by the Respondent to be more credible and note that the Applicant did not sufficiently rebut this analysis."

On the foregoing, I uphold the denial of the balance sought herein.

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 NY
SS :
County of Queens

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

02/27/2025
(Dated)

Giovanna Tuttolomondo

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:
aeee595ba51dce6a5c040edf8481fba2

Electronically Signed

Your name: Giovanna Tuttolomondo
Signed on: 02/27/2025