

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

JR Medical PC
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1348-4897

Applicant's File No. DK24-469415

Insurer's Claim File No. 236049060

NAIC No. 24260

ARBITRATION AWARD

I, Kent Benziger, 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: A.M.

1. Hearing(s) held on 03/31/2025
Declared closed by the arbitrator on 03/31/2025

Artur Finkel, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Christian Guayasamin, Esq. from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,085.72**, 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

On November 16, 2023, the Assignor/Eligible Injured Party, a 48-year-old male, was involved in a motor vehicle accident. In dispute is the proper fee schedule for upper and lower EMG/NCV studies administered on February 27, 2024. Respondent timely reimbursed \$1,605.08 of the \$2,690.80 billed. The Carrier denied reimbursement for F-Wave studies (95905 - \$1,085.72) on the basis that per CPT guidelines Code 95905 cannot be billed in conjunction with codes 95885 - 95887 and 95907 - 95913. In support, Respondent has cited both the CPT Code Book and the CPT Assistant, March 2013.

4. Findings, Conclusions, and Basis Therefor

On November 16, 2023, the Assignor/Eligible Injured Party, a 48-year-old male, was involved in a motor vehicle accident.

In dispute is the proper fee schedule for upper and lower EMG/NCV studies administered on February 27, 2024. The Applicant billed for the following: 1) EMG Consultation (99203-25 \$142.62), 2) Needle EMG, done with NCV (95886 4 units \$809.00), 3) F-Wave Study (95905 4 units \$1,085.72), 4) 13 or more nerve conduction studies (95913 \$653.46).

Denial/Partial Payment. Respondent timely reimbursed \$1,605.08 of the \$2,690.80 billed. The Carrier denied reimbursement for F-Wave studies (95905 - \$1,085.72) on the following basis:

Per CPT guidelines code 95905 cannot be billed in conjunction with codes 95885 - 95887 and 95907 - 95913.

Pursuant to the Fourth Amendment effective April 1, 2013 to 11 NYCRR 65-3.8(g)(1), the Applicant's fees cannot exceed the charges permitted pursuant to the Insurance Law 5108 which would incorporate the Workers Compensation Fee Schedule, and an arbitrator is permitted to take judicial notice of the workers' compensation fee schedule. See *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 20 (2d Dept. 2009).

This Arbitrator takes judicial notice of the CPT Code Book which specifically precludes the reporting of CPT 95905 with codes 95885, 95886 and 95907-95913. In this proceeding CPT 95886 was fully reimbursed. In *Horizon Medical PC v. Progressive*, AAA Case No. 17-24-1352-2494 (December 2, 2024). Arbitrator Charles Blattberg properly summarized these controlling sources.

The CPT Assistant serves as a companion to the CPT Code Book and per CPT Assistant, March 2013: Procedure code 95905 is reported once per limb studied, regardless of the number of nerves tested in a limb. This guidance applies when code 95905 is performed without other nerve conduction studies or EMG. Based on this reporting guidance, it is not appropriate to report code 95905 in addition to codes 95885, 95886, or 95907-95913. The CPT Code Book applies to No-Fault billing practices because the Workers Compensation Fee Schedule's Introduction and General Guidelines states in pertinent part, "Please refer to the CPT book for an explanation of coding rules and regulations not listed in this schedule." See generally *Matter of Global Liberty Ins. Co. v. McMahon*, 2019 NY Slip Op. 03692 (App. Div. 1st Dep't 2019). Respondent met its burden of proof and the burden

of persuasion shifts to Applicant to prove a different interpretation or calculation. See *Cornell Med., P.C. v. Mercury Cas. Co.*, 24 Misc. 3d 58, 61 (App. Term, 2d Dep't 2009). Applicant has not offered evidence of a different interpretation or calculation.

If the Carrier presents sufficient evidence to substantiate its fee schedule defense, the burden shifts to the medical provider to rebut the carrier's fee schedule interpretation. See, *Natural Acupuncture Health, P.C. v. Praetorian Ins. Co.*, 30 Misc 3d 132A (App Term 1st Dept 2011). Applicant's has failed to rebut these authoritative sources. Additional reimbursement for CPT 95905 is denied.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.

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 Orange

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

04/24/2025
(Dated)

Kent Benziger

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:
256ed2fb2224e7b0a78f19b5211ea840

Electronically Signed

Your name: Kent Benziger
Signed on: 04/24/2025