

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bayonne Medical Center
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No.	17-24-1370-9165
Applicant's File No.	MAT-24072346381
Insurer's Claim File No.	52-25G8-33N
NAIC No.	25178

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 03/28/2025, 04/14/2025
Declared closed by the arbitrator on 04/14/2025

Tracy Redmond, Esq. from Brandon J. Broderick, Attorney at Law participated virtually for the Applicant

Steve Choe, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$27,293.91**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$4,533.02 to conform to the appropriate fee schedule. Respondent did not agree to this amended amount.

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

3. Summary of Issues in Dispute

The 57 year old EIP reported involvement in a motor vehicle accident on August 28, 2021; claimed related injury and underwent left shoulder arthroscopic surgery provided at the applicant's facility on December 13, 2022.

The applicant submitted a claim for these facility services, payment of which was denied by the respondent based on its finding that benefits are not payable as the EIP failed to comply with the policy terms by failing to appear for two scheduled independent medical examinations (IMEs.)

The respondent also asserted a fee schedule defense.

The issues to be determined at the hearing are:

Whether the respondent established that the EIP violated a condition precedent to coverage.

Whether the respondent's denial based on the EIP's failure to appear for an IME can be sustained.

Whether the respondent established its fee schedule defense.

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.

No show IME

It is the respondent's burden to prove that the bill in question was properly denied. Under 11 NYCRR 65-1.1, which prescribes the No-Fault Mandatory Personal Injury Protection Endorsement which must be included in all owners policies of motor vehicle liability insurance issued in New York, the "Conditions" section of the endorsement contains a "Proof of Claim" provision (d) which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(d) "the eligible injured person shall submit to medical examination by physicians selected by or acceptable to, the Company when, and as often as, the Company may reasonably require."

Under the regulations claims practice provisions, Section 65-3.5(d) states in pertinent part that: : "[a]ll examinations under oath and medical examinations

requested by the insurer shall be held at a place and time reasonably convenient to the applicant and medical examinations shall be conducted in a facility properly equipped for the performance of the medical examination. The insurer shall inform the applicant at the time the examination is scheduled that the applicant will be reimbursed for any loss of earnings and reasonable transportation expenses incurred in complying with the request."

The respondent submitted an affidavit by someone with personal knowledge of the business practices and the file for this claim, to establish that the scheduling letters were properly mailed. Also submitted was an affidavit from Dr. Drier to establish his personal knowledge that the EIP failed to appear for two scheduled independent medical examinations on July 28, 2022 and August 11, 2022.

However, the applicant submitted sufficient evidence to establish that the IME which was scheduled on August 11, 2022 was rescheduled at the EIP's attorney's request. A letter from the EIP's attorney dated March 16, 2023 stated that he was unable to attend the July 28, 2022 IME and was told by a person at the IME vendor's office that the IME would be rescheduled.

No further notice was given to the EIP or his attorneys and the submissions did not contain any correspondence rescheduling the August 11, 2022.

Under these circumstances, the respondent did not establish that the EIP violated a condition precedent to coverage.

Therefore, the respondent's denial based on the EIP's failure to appear for an IME cannot be sustained.

Fee Schedule

The applicant billed a total of \$27,293.91 for the facility services at issue, for which the respondent made no payment based on its denial on the grounds that the EIP did not appear for two scheduled IMEs. I have already determined that the respondent did not establish this defense.

The only remaining issue is whether the respondent established its fee schedule defense.

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.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and often requires testimony and expertise beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the latter scenario and requires an expert's opinion.

The EIP is a New York resident and the medical services at issue were provided in New Jersey.

Pursuant to New York State Department of Financial Services Thirty Third Amendment to 11 NYCRR 68 (Insurance Regulation 83) which applies to health services performed outside New York State was effective January 23, 2018 the correct reimbursable amount is the lesser allowance of the New York and New Jersey fee schedules for the medical services provided.

Based on this analysis, the fee schedule that will be used in accordance with the above regulations will be the New York State Workers' Compensation Fee Schedule.

The respondent supported its fee schedule defense, with the affidavit of Jodie Cole, L.Ac., CPC a medical professional and certified professional coder who submitted a comprehensive review and analysis of both the New Jersey and New York fee codes and determined, based on the applicable New Jersey fee schedule, the correct reimbursable amount is \$19,732.02 and according to the applicable New York Workers' Compensation Medical Fee Schedule that the correct reimbursable amount for the facility services at issue is \$3,060.57.

The applicant submitted the affidavit of Priti Kumar, CPC, a certified professional fee coder who also provided a comprehensive analysis of the charges at issue both in the New Jersey and New York fee schedules and determined that the correct reimbursable amount for the facility fee at issue pursuant to the New Jersey fee schedule is \$19,732.02. The correct reimbursable amount based on the New York fee schedule is \$4,533.02.

The fee coders each discussed reimbursement for CPT code 29826 and whether that additional procedure was payable.

After a review of all the evidence submitted an issue of fact remains as to the correct reimbursable amount for the services at issue. Conflicting opinions have been presented in the affidavit of Jodie Cole, L.Ac., CPC and the affidavit of Priti Kumar, CPC who submitted an affidavit on behalf of the applicant. I find that the submission of Jodie Cole, L.Ac. is more persuasive in this instance.

Based on the foregoing, the respondent has established its fee schedule defense but has not made any payment to the applicant.

Accordingly, the applicant is awarded \$3,060.57 in disposition of this claim.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Bayonne Medical Center	12/13/22 - 12/13/22	\$27,293.91	\$4,533.02	Awarded: \$3,060.57
Total			\$27,293.91		Awarded: \$3,060.57

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/23/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 11 NYCRR §65-4.6(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 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.

05/08/2025
(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:

fad5ec04de4f6c0d1a6ec411105f8339

Electronically Signed

Your name: Anne Malone
Signed on: 05/08/2025