

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RCK Medical Services PC
(Applicant)

- and -

Allstate Property and Casualty Insurance
Company
(Respondent)

AAA Case No. 17-24-1370-6214

Applicant's File No. FDNY24-82648

Insurer's Claim File No. 0759429979
PRG

NAIC No. 17230

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 05/15/2025
Declared closed by the arbitrator on 05/15/2025

Melissa Pirillo, Esq. from Fass & D'Agostino, P.C. participated virtually for the Applicant

Marilyn Oppedisano, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$282.46**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$82.34 to conform to the appropriate fee schedule and to reflect payments made by the respondent. The 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 65 year old EIP reported involvement in a motor vehicle accident on May 24, 2024; claimed related injury and underwent a disability evaluation provided by the applicant on August 5, 2024.

The applicant submitted a claim for these medical services, partial payment of which was timely made by the respondent based upon its determination of the correct reimbursable amount pursuant to the New York Workers' Compensation Medical Fee Schedule.

The issue to be determined at the hearing is 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.

The applicant billed a total of \$530.80 under CPT code 99456 for the services at issue, for which the respondent down-coded the CPT code to 99243 and made partial payment of \$248.34 pursuant to the appropriate fee schedule, leaving a balance of \$82.24.

The respondent contends that no further reimbursement is due.

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.)

The respondent supported its fee schedule defense, with the affidavit of Carolyn Mallory, CPC, a certified professional coder. The respondent contends that although the affidavit is generic and not specifically provided for this claim the issues are the same as those at issue here.

However, the Mallory affidavit submitted by the respondent involves range of motion/muscle testing provided by a chiropractor, which is not listed in the chiropractic fee schedule.

In this matter the applicant billed for a disability evaluation under CPT code 99456.

The New York Workers' Compensation Medical Fee Schedule describes CPT code 99456 as follows:

Work related or medical disability examination by other than the treating physician that includes: Completion of a medical history commensurate with the patient's condition; Formulation of a diagnosis, assessment of capabilities and stability, and calculation of impairment; Development of a future medical treatment plan; and Completion of necessary documentation/ certificates and report.

The instant claim involves an evaluation billed under CPT code 99456 provided by a Dr. Koffler, who was not the EIP's treating physician. The submissions include a "disability certificate" signed by Richard Koffler, M.D. which states:

This is to certify that the following examination performed on 8/5/24, [EIP] is confirmed to have a partial impairment, due to the patient's inability of performing certain work and activities of daily living. The patient's complaints and disability status are supported by the findings of this physical examination and evaluation, and causally related to the accident of 5/24/24.

It is recommended the patient be re-evaluated at a further date.

Ground Rule 8 of the E/M fee schedule Special Evaluation and Management Services (99450-99456) states:

This series of codes reports provider evaluations performed to

establish baseline information for insurance certification and/or work-related or medical disability.

The report of the initial impairment disability evaluation indicates that the at the time of the examination the EIP returned to work after the subject accident.

The respondent down-coded the CPT code from 99456 to 99243 which states:

Office consultation for a new or established patient, which requires these 3 components: A detailed history; A detailed examination; and Medical decision making of low complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate severity. Typically, 40 minutes are spent face to face with the patient and/or family.

It appears that there is an issue as to whether the evaluation at issue was provided for issuing any work related life or disability insurance certificates.

In this matter, the report of the initial impairment disability evaluation indicates that the at the time of the examination the EIP was already found eligible for no-fault benefits and had returned to work after the subject accident. Therefore, there was no need for an evaluation of "baseline information for insurance certification...or work-related medical disability."

The fact that Dr. Koffler included a "disability certificate" with his evaluation does not necessarily change the nature of the evaluation.

After a review of all the evidence submitted an issue of fact remains as to the correct reimbursable amount for the services at issue.

The respondent argued that CPT code 99456 is not appropriate for the type of evaluation performed to establish the medical necessity for medical services related to no-fault benefits.

Based on the totality of the documentation provided in the submissions, I find that the report provided by Dr. Koffler is more closely related to the comprehensive evaluation provided under of CPT code 99243.

Therefore, this claim was properly down-coded to CPT code 99243 and the total reimbursable amount due was \$248.34 for which payment was made in full.

Based on the submissions and the New York Workers' Compensation Medical Fee Schedule no further reimbursement is due.

Under these circumstances, the respondent established its fee schedule defense.

Accordingly, the claim is dismissed with prejudice.

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 claim is DENIED in its entirety

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.

06/01/2025
(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:
58be2db59066430810c397d1cfcc564b

Electronically Signed

Your name: Anne Malone
Signed on: 06/01/2025