

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Cross Bay Orthopedic Surgery PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1374-8637

Applicant's File No. 172434

Insurer's Claim File No. 32-64R4-25G

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 05/12/2025
Declared closed by the arbitrator on 05/12/2025

John Faris, Esq. from Law Offices of Eitan Dagan participated virtually for the Applicant

Jonathan Owens, Esq. from Freiberg, Peck and Kang, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$10,047.37**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$1,502.85 to conform to the appropriate fee schedule and to reflect payments made by the respondent.

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

3. Summary of Issues in Dispute

The 29 year old EIP reported involvement in a motor vehicle accident on March 15, 2024; claimed related injury and underwent right shoulder arthroscopic surgery provided by the applicant on August 14, 2024.

The applicant submitted a claim for the surgeon services, for which partial payment was made pursuant to the respondent's calculation 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 \$10,047.37 for the surgeon services at issue, for which the respondent made partial payment of \$4,129.31 based on its calculation of the correct reimbursable amount pursuant to the appropriate fee schedule, leaving a balance of \$5,918.06. The respondent made total payment of \$4,277.97 with included \$148.66 in interest. At the hearing the applicant amended the amount in dispute to \$1,502.85.

To prevail in a fee schedule defense, the respondent must demonstrate by competent evidentiary proof that applicant's claims were in excess of the appropriate fee schedules, or otherwise respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Co., 11 Misc.3d 145(A) (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 evidence 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 respondent supported its fee schedule defense with the affidavit of Lori Ercolini, RN. CPC, a medical professional and certified professional coder who

submitted a comprehensive review and analysis and determined, based on the applicable New York fee schedule that the correct reimbursable amount for the surgeon services at issue is \$3,096.35. This amount is based on the New York Workers' Compensation Medical Fee Schedule, NYS Regulation 83 and NYS Office of Professions and AMA Knowledge Base. She also submitted pages of the AAOS Bulletin with questions and answers from the AAOS Coding, Coverage and Reimbursement Committee to support her decision regarding the correct total reimbursement allowed.

The applicant billed four CPT codes: 29821, 29823, 29825, 29999 and 29999. Ms. Ercolini determined that the only reimbursable CPT codes are 29823 and 29825 and the other codes billed are not reimbursable.

Therefore, she determined that the applicant is only entitled to reimbursement of \$3,096.35 for the surgeon's bill at issue.

The applicant submitted the affidavit of Theresa Carbone, CPC, a certified professional fee coder who reviewed the medical/surgery records and submitted a thorough review of the procedures performed according to the operative report and determined based on the New York Workers' Compensation Medical Fee Schedule that the total reimbursable amount for the surgeon services is \$5,077.83.

After a review of all the evidence submitted an issue of fact remains as to the correct reimbursable amount for all of the surgeon's services at issue. Conflicting opinions have been presented in the affidavit of Lori Ercolini, RN, CPC and the affidavit of Theresa Carbone, CPC.

I find that the submissions of Ms. Ercolini were more persuasive in this instance.

Under these circumstances, the respondent has 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.

06/11/2025

(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:
0662a4f0974ade1207791e86c44a7b7f

Electronically Signed

Your name: Anne Malone
Signed on: 06/11/2025