

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Leora Barzi, PA , Jasoda Dhupan
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-24-1365-6568

Applicant's File No. 553764, 553687

Insurer's Claim File No. 0708718804

NAIC No. 19232

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 06/02/2025

Declared closed by the arbitrator on 06/02/2025

Steven Palumbo, Esq. from Leon Kuchеровsky Esq. participated virtually for the
Applicant

Dana Nelson, Esq. from Law Offices of John Trop participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$2,382.52**, 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

The 22 year old EIP reported involvement in a motor vehicle accident on March 31, 2023 and claimed related injury.

This claim involves two different providers. Jasoda Dhupan, NP who provided an office visit and needling on June 6, 2023 and Leora Barzi, PA who provided the same services on June 13, 2023.

The applicant submitted a claim for these medical services. The respondent denied payment for the services provided on June 6, 2023 provided by Jasoda Dhupan, NP, based on its finding that benefits are not payable as the applicant

failed to comply with the policy terms by failing to appear for two scheduled examinations under oath.

The respondent made partial payment for the services provided on June 13, 2023 by Leora Barzi, PA, pursuant to its calculation of the correct reimbursable for these services provided by a PA, pursuant to the appropriate fee schedule.

The respondent also asserted a fee schedule defense for the services rendered on June 6, 2023 by Jasoda Dhupan, NP.

The issues to be determined at the hearing are:

Whether the respondent established that the applicant violated a condition precedent to coverage and that the denial can be sustained based on the applicant's failure to appear for an EUO related to the claim by Jasoda Dhupan NP.

Whether the respondent established its fee schedule defense for the services rendered by applicant Leora Barzi, PA and Jasoda Dhupan, NP.

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 EUO - for services rendered by applicant Jasoda Dhupan, NP

It is the respondent's burden to prove that the bills in question were 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 which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same..."

If the respondent requires an EUO of the applicant it has 15 business days after receipt of proof of claim in which to send correspondence requesting the examination under oath. If the party fails to attend, within 10 calendar days of the no-show the insurer must contact the party from whom the EUO is requested to give the party a second opportunity to attend.

According to the submissions, the respondent failed to timely send the second request for the EUO of applicant Jasoda Dhupan, NP.

Based upon the proof presented, I find that the respondent failed to establish that the applicant violated a condition precedent to coverage related to the claim by Jasoda Dhupan, NP.

Therefore, an award may be issued in favor of applicant Jasoda Dhupan, NP, pursuant to the applicable fee schedule.

Fee schedule

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 Carolyn Mallory, CPC, a certified professional coder who submitted a comprehensive review and analysis and determined, based on the applicable New York fee schedule the correct reimbursable amount for the services at issue.

Both applicant's billed \$203.76 for follow up visits provided on the same day that needling services were provided. Since Jasoda Jhupan was an NP and Leora Barzi was a PA, they would only be allowed to bill 80% of the charge for office visits based on the appropriate fee schedule.

Ms. Mallory determined that neither applicant is entitled to reimbursement for the office visits provided on the same dates of service that the needling was performed.

Under these circumstances, the respondent established a fee schedule defense for these services.

Needling services rendered by Jasoda Dhupan, NP and Leora Barzi, PA

In her affidavit Ms. Mallory states in pertinent part:

Ground Rule #3 - Procedures Listed without Specific Relative Value Units

- Ground Rule #3 on page 13 in the Introduction and General Guideline

section of the 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 states' 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.

- CPT Assistant dated October 2014 / Volume 24 Issue 10 indicates the correct CPT code to use for dry needling would be 20999.
- In 2020, the AMA added CPT code 20561 "Needle insertion(s) without injection(s); 3 or more muscles" to report Dry Needling services.
- Since the date of service is after 1/1/2020 the appropriate CPT code to use for trigger point injections is 20561 and not 20999.

Reimbursement for needling provided on June 6, 2023 by Jasoda Dhupan, NP

Based on her analysis, Carolyn Mallory, CPC determined, based on the applicable fee schedule, that applicant Jasoda Dhupan, NP is only entitled to \$104.81 for the first charge for needling and that no further reimbursement is due.

Applicant Jasoda Dhupan did not submit an affidavit from a certified professional fee coder, medical professional or other expert to refute the findings of the respondent's expert.

Under these circumstances the respondent established its fee schedule defense.

Therefore, applicant Jasoda Dhupan, NP is awarded \$104.81 in disposition of the claim for services provided on June 6, 2023 and the remainder of the claim is dismissed with prejudice.

Reimbursement for needling provided on June 16, 2023 by Leora Barzi, PA

Based on her analysis, Carolyn Mallory, CPC determined, based on the applicable fee schedule, that applicant Leora Barzi, PA is only entitled to \$104.81 for the first charge for needling and that no further reimbursement is due.

However, the submissions for applicant Leora Barzi, PA document payment of \$163.01 and \$104.81. According to Carolyn Mallory, CPC this represents an overpayment of \$163.01.

Applicant Leora Barzi, PA did not submit an affidavit from a certified professional fee coder, medical professional or other expert to refute the findings of the respondent's expert.

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

Therefore, the claim for services provided on June 16, 2023 by Leora Barzi, PA is dismissed with prejudice.

Accordingly, applicant Jasoda Dhupan, NP is awarded \$104, 81 in disposition of this claim and the claim for services rendered by applicant Leora Barzi, PA 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Leora Barzi, PA	06/13/23 - 06/13/23	\$1,178.76	Denied
	Jasoda Dhupan	06/06/23 - 06/06/23	\$1,203.76	Awarded: \$104.81
Total			\$2,382.52	Awarded: \$104.81

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/17/2024 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.

06/27/2025
(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:
ec03a75161d4ff0af753494e47409f37

Electronically Signed

Your name: Anne Malone
Signed on: 06/27/2025