

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bay Ridge Orthopedic Assoc. PC (Applicant)	AAA Case No.	17-25-1381-0146
- and -	Applicant's File No.	n/a
	Insurer's Claim File No.	0752570010 JCO
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

### ARBITRATION AWARD

I, Jeffrey Silber, 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 06/30/2025  
Declared closed by the arbitrator on 06/30/2025

April Mittleman, Esq. from April Mittleman Esq. participated virtually for the Applicant

Omid Khani, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$9,312.77**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended to the fee amount of \$4,012.27 after Respondent did make a partial payment.

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

3. Summary of Issues in Dispute

The EIP, LB, a 57-year-old female was injured in a motor vehicle accident on April 16, 2024. The EIP sought medical treatment for her injuries sustained in the accident. The EIP subsequently underwent left knee arthroscopic surgery on August 30, 2024. Respondent partially reimbursed the Applicant citing as its defense the WCFS Surgery Ground Rule.

#### 4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case.

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See, *Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co.*, 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). See also, *Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co.*, 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (Civil Ct, Kings Co. 2006).

If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims were in excess of the appropriate fee schedules, defendant's defense of noncompliance with the appropriate fee schedules cannot be sustained. See, *Continental Medical PC v. Travelers Indemnity Co.*, 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't, per curiam, 2006).

In support of its position, Respondent has provided the affidavit of Ms. C. Mallory, Certified Professional Coder (CPC). In said affidavit, Ms. Mallory details and lists her credentials as aforementioned. In the affidavit, Ms. Mallory goes through each code billed and why or why each code is not reimbursable and at what rate. With respect to CPT 29999 Ms. Mallory cites the CPT Assistant and argues that use of a TOPAZ microdebrider device is a tool and not a procedure. Therefore, coblation is debridement which is included in CPT 29880. She determined that the Applicant was entitled to reimbursement in the total amount of \$4,152.72 which is \$145.43 less than what the Respondent had originally reimbursed the Applicant.

After a careful evaluation of the evidence before me, I am persuaded by the calculation of Ms. Mallory that the proper reimbursement herein is \$4,199.39. I find that Ms. Mallory provided a detailed and thorough analysis of the fee schedule and offered a sound and supported rationale for her opinion. Moreover, Applicant has not submitted an Affidavit of a coder, or any other evidence that meaningfully refers to or discusses the determination of Respondent's expert, and has therefore, failed to rebut Respondent's

evidence. Therefore, I find that Respondent has satisfied its burden of proof on its fee schedule defense.

Accordingly, Applicant is awarded reimbursement in the amount of \$145.43 for the underpayment of the PA claim.

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
	Bay Ridge Orthopedic Assoc. PC	08/30/24 - 11/05/24	\$9,312.77	\$4,012.27	Awarded: \$145.43
<b>Total</b>			<b>\$9,312.77</b>		<b>Awarded: \$145.43</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/07/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 1/7/25 (the filing date for this case) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00.

- 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 NY  
SS :  
County of Rockland

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

07/11/2025  
(Dated)

Jeffrey Silber

**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:**  
dac16baf1e07b6108a237e2c5dea4583

**Electronically Signed**

Your name: Jeffrey Silber  
Signed on: 07/11/2025