

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

Esurance Insurance Company
(Respondent)

AAA Case No. 17-24-1346-6361

Applicant's File No. ES24-107558

Insurer's Claim File No. 240140969

NAIC No. 30210

ARBITRATION AWARD

I, Matthew J. Cavalier, 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: Assignor

1. Hearing(s) held on 07/11/2025
Declared closed by the arbitrator on 07/11/2025

James Errera, Esq from Shapiro & Associates, P.C. participated virtually for the Applicant

Robert Goldstein, Esq from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,364.89**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated at the hearing to the date upon which interest shall accrue if the Applicant prevails, May 6, 2024.

3. Summary of Issues in Dispute

Whether the Assignor, a 45-year-old male ("DF") on the date of the accident ("DOA") who is the eligible injured party ("EIP"), injured in an motor vehicle accident ("MVA") on February 21, 2024, who received ultrasound and trigger-point medical services on date of service March 7, 2024, and whether these services were correctly billed in the

sum of \$2864.07, and correctly reimbursed in the sum of \$499.18, by the Respondent, with \$2364.89 in dispute on the AR-1?, and

Whether the Respondent can maintain its defense that this DOS was properly reimbursed and paid in full as per the New York State Worker's Compensation Fee Schedule

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. 11 NYCRR 65-4.5(o)(1)(Regulation 68-D).

There is one bill for DOS March 7, 2024, in the total sum of \$2864.07 that the Applicant timely forwarded to the Respondent and the Respondent's Counsel states that the sums paid upon submission, \$1200.51, is confirmed in part by the fee audit of Lisa Bieber, CPC, dated September 10, 2024, who calculates \$413.48 for the two DOS in dispute as 499.18 is the correct NYSWC fee scheduled amount for the rendered services, but with \$7.07 due and owing to the Applicant Medical Provider.

The Applicant Attorney acknowledged the prior payment of \$499.18 at the hearing and argued that the as per their fee memo dated July 13, 2022, by Michael D. Miscoe, CPC, that the 3 J-codes as well as the additional CPT 76992s may be billed per individual muscle group as per Rule 3(b), therefore \$1661.70 is the correct sum due and owing, with credit for the \$499.18 previously paid to the Applicant Medical Provider.

Prima facie Case

The Applicant establishes a *prima facie* showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received by Respondent and that payment of no-fault benefits were overdue. **Mary Immaculate Hospital v. Allstate Insurance Company**, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Fee Schedule

The Respondent has submitted the following in support of their defense of payment made in full as per the NYSWC fee schedule:

1. Specific NF-10 dated April 5, 2024, for the DOS March 7, 2024, with explanations as to sums reimbursed under the NYSWC fee schedule.
2. The NYSWC fee schedule section pertaining to the services rendered to the Assignor.

3. A copy of the PIP Ledger as proof of payments to the Applicant and to various other providers on the same DOS, listing the date the NF-3 was received, the amount of the NF-3, the date the payment was made, the check number, the sum of the check, and the date of negotiation of the check as proof of the concurrent care payment as well as payment in full for the Applicant's NF-3s.

4. EOBs for the same DOS to other medical providers in support of the Respondent's concurrent care, 8- and 12-Unit Arguments under NYSWC Fee Schedule if applicable.

5. Copy of Check No.: 0220227126 dated April 5, 2024, in the sum of \$499.18 for DOS March 7, 2024.

6. The professional fee coder's affidavit of Lisa Bieber, CPC sworn to on June 15, 2024, that calculates a total of \$506.25 for the DOS in dispute, and when credit for the prior payment of \$499.18 is taken, \$7.07 is due and owing to the Applicant.

The Applicant did submit the professional fee coder's memo of Michael Miscoe, CPC and calculates an additional \$1661.70 for the J3490 codes and additional CPT 76992*59 is rightfully due and owing to the Applicant after the previous payment is credited.

The Parties requested at the hearing that I take Judicial notice of the NYSWC Fee Schedule and its Associated Rules. Upon my review of the arguments of the parties and the evidence submitted for this hearing, I find the audit and arguments of the Respondent to be more persuasive than the audit and arguments of the Applicant, but since the Respondent has not established that their calculation of the Fair Market Value of the drugs their fee audit swears to a reimbursement of only \$7.07, and the Applicant has no sworn proof that the remainder of the vials of drugs were destroyed and saved after the procedure in dispute, applying Respondent's equation to Applicant's values yields a sum due and owing of \$154.24., thus the Applicant was not paid in full for DOS March 7, 2024, and is awarded \$154.24.

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
	Atlantic Medical & Diagnostic PC	03/07/24 - 03/07/24	\$2,364.89	Awarded: \$154.24
Total			\$2,364.89	Awarded: \$154.24

B. The insurer shall also compute and pay the applicant interest set forth below. 05/06/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date the AR-1 was deemed filed with the American Arbitration Association, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

The Applicant's attorney is entitled to one attorney fee in accordance with 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 NY
SS :
County of Suffolk

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

07/18/2025
(Dated)

Matthew J. Cavalier

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:
26b9be7aae7b2544020b72fbf2cb94dd

Electronically Signed

Your name: Matthew J. Cavalier
Signed on: 07/18/2025