

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Integrative Family Health NP PLLC  
(Applicant)

- and -

LM General Insurance Company  
(Respondent)

AAA Case No. 17-24-1373-4731

Applicant's File No. NA

Insurer's Claim File No. 0570039980001

NAIC No. 36447

### ARBITRATION AWARD

I, Evelina Miller, 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: RC

1. Hearing(s) held on 06/23/2025  
Declared closed by the arbitrator on 06/23/2025

Rajesh Barua Esq from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Kathleen Raedy Esq from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$234.33**, 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 dispute arises from the underlying automobile accident of June 2, 2024, in which the Assignor (RC), a 53-year-old-female was involved. Thereafter, Assignor sought private medical attention and was eventually evaluated with complaints pain in the neck, lower back, and the right shoulder. Eventually patient was recommended to undergo outcome assessment testing which was performed on the patient on 6/4/24. The bill in dispute is for outcome assessment testing which was performed on the patient on 6/4/24. Respondent contends that Applicant billed for the outcome assessment testing in excess of the fee schedule.

The issue presented at the hearing is whether Respondent reached its burden of coming forward with competent evidentiary proof to support its fee schedule defenses.

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

I have reviewed the submissions contained in MODRIA which are maintained by the American Arbitration Association. These submissions are the record in this case. My decision is based on my review of that file, as well as the arguments of the parties at the hearing. All the parties at this hearing appeared via ZOOM.

I find that Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and 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 Co.*, 5 A.D.3d 742, (2d Dept., 2004). Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See *Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004, NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

#### **Outcome Assessment:**

For the date of service of 6/4/24 Applicant billed for outcome assessment testing in the amount of \$234.33 with CPT code 99354 Respondent denied Applicant's bill stating:

*"THIS ADD-ON CODE HAS BEEN DENIED AS THE PRIMARY PROCEDURE WAS EITHER NOT BILLED OR NOT ALLOWED."*

The rates charged by Applicant must be in accordance with Insurance Law § 5108, as the charges for services rendered "shall not exceed the charges permissible under the schedules prepared and established by the chairman of the Workers Compensation Board for Industrial Accidents, except where the insurer or arbitrator determines that unusual procedures or unique circumstances justify the excess charge."

In addition, § 5108 (c) states that, "no provider of health services... may demand or request any payment in addition to the charges authorized pursuant to this section."

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). 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).

Effective April 1, 2013, 11 NYCRR 65-3.8(g)(1) has been amended so that the application of the New York State Worker's Compensation fee schedule is no longer a precludable defense and no payment is due on those claims in excess of the fee schedule. Per 11 NYCRR 65-3.8(g), where the services were rendered after April 1, 2013, a defense of excessive fees is not subject to preclusion Surgicare Surgical Associates v. National Interstate Ins. Co., Misc.3d,N.Y.S.3d, 2015 N.Y. Slip Op. 25338 (App. Term 1st Dept. Oct. 8, 2015), aff'g, 46 Misc.3d 736, 997 N.Y.S.2d 296 (Civ. Ct. Bronx Co. 2014) (New Jersey fee schedule). The insurer is entitled to reduce the bills to the proper fee schedule amount.

I take judicial notice of the fee schedule and find the following. Applicant billed for both an evaluation (pursuant to CPT code 99204) together with the outcome assessment testing (billed pursuant to CPT code 99358), on the same date of service. Thus, Respondent denied reimbursement citing Fee Schedule grounds. I concur.

The "CPT Assistant is incorporated by reference into the CPT book, which is incorporated by reference into the Official New York Workers' Compensation Medical Fee Schedule applicable to this claim under the No-Fault Law; [any] award rendered without consideration of CPT Assistant is incorrect as a matter of law." Matter of Global Liberty Ins. Co. v. McMahon, 2019 NY Slip Op 03692 (1ST Dept., 2019)." Thus, the CPT Book and CPT Assistant are incorporated into the No-Fault law, per Insurance Law Section 5108 and 11 NYCRR Sections 68.0, 68.1[a][1].

CPT code 99354 is listed within the Evaluation & Management section of the Fee Schedule and is considered an "add-on" code. Therefore, it must be billed in conjunction with a primary procedure by the same practitioner. Ground Rule 13 states: "Add-on procedures/services are always performed in addition to the primary procedure/service and must never be reported as stand-alone codes. The same physician that performed the primary procedures/services must perform them. Add-on codes describe additional intra-service work associated with the primary procedure/service." Billing for outcome assessment testing, which is a prolonged evaluation on same date as an office visit is permissible except - as in the instant matter - when outcome assessment testing is reported in conjunction with CPT codes 99202-99205 and 99212-99215, on the same date. See: CPT Assistant, Volume 30; Issue 9, September, 2020.]

Since the office visit, for date of service 6/4/24 was billed per CPT Code 99204, is contained within the range of excluded services, Applicant is not entitled to reimbursement for the outcome assessment testing performed on the same date of service, which would constitute unbundling.

Respondent's denial for this billing is therefore sustained.

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 NY  
SS :  
County of Kings

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

07/23/2025  
(Dated)

Evelina Miller

**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:**  
8c6cfaf817cb37d556840e006e8fd8b8

**Electronically Signed**

Your name: Evelina Miller  
Signed on: 07/23/2025