
In the Matter of the Arbitration between:

Rural/Metro Medical Services / Applicant I (Applicant)	AAA Case No.	412010021737
	AAA Assessment No.	17 991 13229 10
	Applicant's File No.	
- and -		
Allstate Insurance Company (Respondent)	Insurer's Claim File No.	0154432926N32

ARBITRATION AWARD

I, Kent L. Benziger, Esq., 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: K.F.

1. Hearing(s) held on

07/27/10

and declared closed by the arbitrator on 7/27/10.

Karen Taddeo participated in person for the Applicant.

Robert Stern participated in person for the Respondent.

2. The amount claimed in the Arbitration Request, **\$312.78**, 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

1) Whether the Applicant has properly billed for ambulance services pursuant to the prevailing charge in the geographic area; and, 2) Whether the Respondent can use the Medicare/Medicaid Ambulance Fee Schedule as guidance in determining the prevailing rate.

Applicant has submitted the following documents:

1. Applicant's Contentions;
2. Correspondence;
3. Consumer Service Bureau;
4. Invoices and payment – Other carriers;
5. AR-1; Assignment;

6. Federal Register; GAO Medicare Reports;
7. Post Hearing Submissions;
8. Workers' Compensation Decisions.

Respondent has submitted the following documents:

1. Respondent's Contentions;
2. NF-10 Denials;
3. MMAFS Ambulance Fee Schedule;
4. Transportation Fee Schedules;
5. Post Hearing Submissions;
6. Evidence of Partial Payment

This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

4. Findings, Conclusions, and Basis Therefor

The issue in this proceeding is the proper fee schedule for an ambulance service.

On November 23, 2009, the Assignee, an ambulance company in Western New York, transported the Assignor/Eligible Injured Party. The company billed \$646.70 for the services and received partial payment of \$333.92. The Explanation of Benefits on the accompanying NF-10 stated:

The payment was relating to permissible charges for ambulance services, and was reduced to reflect the local prevailing charge based on rates used by the Centers for Medicare and Medicaid Services, department of Health and Human Services, publisher of the Medicare/Medicaid fee schedule.

The New York Workers Compensation Fee Schedule does not include a specific fee schedule for ambulance services. Instead, Regulation 83 11 NYCRR 68, Appendix 17-C, Part G states "the maximum permissible charge for ambulance service is the local prevailing charge for such service". Through its consumer webpage pertaining to Regulation 83 and the No-Fault Fee Schedule, the New York State Insurance Department clarifies the provision as follows:

What is the correct fee schedule amount to be charged for ambulance transportation under the New York No-Fault fee schedule?

Ans. Regulation No. 83, Part G contains the No-Fault fee schedule for ambulance transportation. Pursuant to this schedule, the maximum permissible charge for ambulance service is the local prevailing charge for such service in the geographic area where rendered.

The Applicant/Ambulance Company contends that it billed the local prevailing rate for its location in Western New York, and it is the Respondent/Carrier's burden to prove the amount billed is not consistent with the prevailing charge. In contrast, the Respondent contends that Medicare/Medicaid Ambulance Fee Schedule (hereinafter "MMAFS") should be looked to for guidance in determining the prevailing rate since it considers "many unique and indigenous factors relating to the precise geographic location".

Case law has held found that when an Applicant's services are correctly billed under this provision of the fee schedule the insurer's remedy is limited to a review of the prevailing fee in the geographic area and, in certain circumstances, fees for similar procedures adopted by the superintendent 11 NYCRR § 68.5(b); Power Acupuncture P.C. v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065(A), 816 N.Y.S.2d 700 (2006). Yet, in this instance, the Respondent has not utilized this remedy. The carrier is not defending its partial payment by questioning the customary and prevailing fee for ambulance services in Western New York or by even equating the charge to another service within the Workers Compensation Fee Schedule. Instead, the Respondent, through its denial, contends that another fee schedule (MMAFS) should be used under the pretext that this Medicare schedule considers factors relating to the geographic location.

In this case, both parties acknowledge that the New York Workers' Compensation Fee Schedule and specifically Appendix 17-C, Part G is the proper authority for this claim. Further, as noted in State Farm Mutual Automobile Insurance Co. v. Mallela, 4 N.Y.3d 313, 794 N.Y.S.2d 700 (2005) when the Insurance Superintendent has properly crafted a rule within the scope of his authority, that rule has the force of law and represents the policy of this state. Further, the New York Compensation Fee Schedule does not reference or in anyway incorporate Medicare standards. Tahir v. Progressive Casualty Insurance Company, 12, Misc.3d 657 (2006). Respondent's counsel is being disingenuous in contending that the Medicare fee schedule is evidence of the local prevailing charge for reimbursing ambulance in Western New York. As noted by Applicant's counsel and through a May 2007 United States Government Accountability Office Report to Congressional Committees, the Department of Health and Human Services set the Medicare fee schedule with the aim of having ambulance providers share the cost burden of this particular social welfare program. Some studies have found that Medicare is designed to reimburse providers at less than their actual costs. This is not the stated intent of New York Workers' Compensation Fee Schedule. Instead, in New York under the No-Fault regulations, an ambulance's bill must simply reflect the local prevailing charge.

As noted, both the no-fault and workers compensation use the same fee schedule, and Applicant's counsel has cited two decisions from the Workers' Compensation Board which found that an insurance carrier has burden to prove that the fee charges is not the usual and customary prevailing fee and that there is no authority for an insurance carrier to utilize the Medicare fee schedule. Although the Workers Compensation Board is not strictly

controlling, the decisions should be given great weight as they involve the same fee schedule. Further, the rationale was accepted by Arbitrator Mary Anne Theiss in a case in this forum involving the same issues as the instant proceeding.

This issue has come before the Workers' Compensation board in the past. No-Fault has adopted the Workers' Compensation fee schedule so these decisions are given weight. In State Police, 2005 NY Wrk Comp 90405819; 2005 NY Wrk Comp. LEXIS 10453 and Cortland State College, 2005 NY Wrk Comp 90500288; 2005 NY Wrk Comp. LEXIS 10536 The Workers' Compensation judges held that the Carrier did not offer a substantial basis to rebut the allegation that the ambulance service's charge was not reasonable and appropriate. The courts went on to point out that there is no precedent to adopt the ambulance fee schedule set forth by Medicaid. The courts further indicated that any such changes are best left to the legislation. I agree. The charges are reasonable and appropriate for the services rendered.

AAA No. 412010016038 (July 6, 2010)

Therefore, as a finding of fact, Applicant is awarded of \$312.78 for full reimbursement for the ambulance service.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

Attorney's Fees and Interest

The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30 day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(c)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, plus interest thereon with a minimum of \$60.00 and a maximum of \$850.00 per claim which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 12 N.Y.3d 217 Court of Appeals, 2009).

APPLICANT IS AWARDED REIMBURSEMENT OF \$312.78, TOGETHER WITH INTEREST AND ATTORNEY'S FEES.

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.

Accordingly, the applicant is AWARDED the following:

A.

Benefits	Amount Claimed	Amount Awarded
Health Service Benefits	312.78	312.78
Totals:	\$312.78	\$312.78

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 05/07/2010, which is a relevant date only to the extent set forth below.)

The Respondent shall compute and pay to the Applicant the amount of interest from aforesaid filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30 day month 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.

Pursuant to 11 NYCRR 65-4.6(c)(e), the Applicant is awarded 20 percent of the amount of the total first party-benefits, plus interest thereon with a minimum of \$60.00 and a maximum of \$850.00 per claim which is the total amount awarded one Applicant in one action per one provider See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 2009 NY Slip Op 02481 (Court of Appeals, 2009).

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.

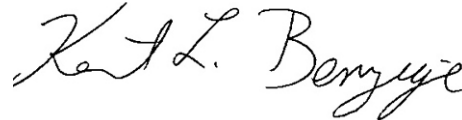
This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of Erie .

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



(Kent L. Benziger, Esq.)

8/11/10

(Dated)

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.