

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Susan J Polino PhD  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No. 17-22-1248-9056

Applicant's File No. DK22-228390

Insurer's Claim File No. 1103507-02

NAIC No. 16616

**ARBITRATION AWARD**

I, Michael Achtziger, 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 10/05/2023  
Declared closed by the arbitrator on 10/05/2023

Henry Guindi, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Helen Cohen, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,177.96**, 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

Is Applicant entitled to reimbursement for review of medical records and psychological testing performed 12/27/21 for this 24-year-old male bicyclist after an accident of 09/05/21.

Respondent timely, partially, denied this claim based upon the 12/22/21 Peer Review Report of Yakow Burstein, PsyD.

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

For Respondent, Mr. Burstein noted that there was no psychological report listing testing or results included in the records reviewed. He opined that the need for extensive psychological testing is only medically necessary if the results cannot be otherwise obtained.

In Rebuttal, Drora Hirsch, MD noted that Dr. Burstein approved the diagnostic interview only to aid with the diagnosis. She noted the patient's complaints to Dr. Polino on 12/22/21 as worries and frequent thought of the accident, and that Dr. Polino recommended psychotherapy counselling to alleviate symptoms and enhance physical recovery. She noted the lack of a universal opinion in the field of psychology on the medical necessity or lack thereof for testing and therapy sessions. She noted that this assessment can only be made as here on 12/22/21, by a face-to-face assessment by a licensed psychologist.

Dr. Hirsch noted that a diagnostic interview cannot yield qualitative measures to assess progress through treatment, only testing. She noted that the quantitative measure allows a more precise determination. She noted the testing indicated in regard to symptoms of worry, anxiety and severe depression.

It is noted that Dr. Hirsch is an emergency room and urgent care physician, not a psychologist or psychiatrist.

Finally viewing the report of Susan Polini, Phd., the diagnosis was right knee pain and did not include anxiety or depression. The patient was noted to have had some improvement and the treatment recommended was psychotherapy counseling. The results of the mental status examination were good, cooperative and normal.

After review of all evidence, I am persuaded that by Mr. Burstein's opinion that the 12/22/21 report of Ms. Polino does not establish medical necessity for psychological testing, and that separate review of medical records is not required in this instance. Furthermore, I do not find the report of an urgent care and emergency room physician as persuasive in rebutting the Peer Review Report of a licensed psychologist. Finally, I note that absence of severe depression related by Dr. Hirsch.

Accordingly, further reimbursement of psychological services is denied.

#### 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 Suffolk

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

10/15/2023  
(Dated)

Michael Achtziger

### **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:**  
b92efb20bf2ba901921c70c2d3f80e3e

### Electronically Signed

Your name: Michael Achtziger  
Signed on: 10/15/2023