

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bronx County Medical Care PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1297-4976

Applicant's File No. 65547

Insurer's Claim File No. 1099767-02

NAIC No. 16616

ARBITRATION AWARD

I, Maryann Mirabelli, 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 12/19/2023
Declared closed by the arbitrator on 12/19/2023

Jeff Henle, Esq., from Gitelis Law Firm, PC participated virtually for the Applicant

Erisa Ahmedi, Esq., from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,088.70**, 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 arbitration arises out of a motor vehicle accident which took place on 7/6/21 whereby the Assignor (LJ) a then 26-year-old male passenger was allegedly injured in the accident and sought treatment with the provider. Applicant is seeking reimbursement for in the amount of \$2088.70 for office visits and outcome assessment testing ranging from 7/7/21 through 2/9/22, along with interest and counsel fees, under the No-Fault Regulations in connection with injuries sustained in the motor vehicle accident.

The threshold issue presented at the hearing is whether Respondent's defense predicated upon testimony obtained by the Assignor supporting the injuries were not consistent with the accident, can be sustained. There was *no fee schedule* issue raised at the

hearing.

4. Findings, Conclusions, and Basis Therefor

The hearing proceeded by ZOOM.

This decision is based upon the written submissions of counsel for the respective parties as well as oral argument. I have reviewed the documents contained in the Record as of the date of the hearing.

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a prima facie case with the respect to the services that are the subject of this arbitration. See, Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004) Once Applicant has made out a prima facie case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 NY3d 312 (2007). Respondent has not submitted a specific NF-10 denial of claim form however its general denial states,

"Entire Claim is denied on the based the conclusion of the Examination Under Oath conducted 01/21/2022 the alleged injuries did not arise out of the use or operation of a motor vehicle."

Applicant advises that this defense has not been sustained in a linked award pertaining to this Assignor involved in this accident whereby the claim was denied predicated by the same defense set forth by this Respondent. See AAA Award No., 17-22-1253-6792. Although I note the findings in the linked award, the Biomechanical Report submitted in this hearing was **not** considered in the linked award. However, in AAA Award No., 17-22-1248-3371, this Arbitrator did in fact address the biomechanical report. I found in the linked award,

*"Respondent advises that an Examination Under Oath ("EUO") of the Assignor was performed on 1/21/22. As a result of the testimony obtained, Respondent argues the alleged injuries did not arise out of the use or operation of the motor vehicle. Additionally, Respondent relies upon a Biomechanical report which was **NOT** uploaded in evidence. I note there were no peer review reports or IME evaluations submitted in evidence to support the lack of causation and lack of medical necessity defense as noted in the denial. Therefore, the only evidence submitted to support Respondent's defense is the actual EUO transcript of the Assignor.*

This Arbitrator has already found that this defense cannot be sustained in a linked award where I did review additional evidence. See AAA Award No., 17-22-1244-5457. I noted in pertinent part in that award,

Respondent also relies upon the "Report of Investigation & Examination Under Oath" dated 1/21/22 which is signed by Patrick Carr, Special Investigator who conducted of the Assignor. The report states the determination was made that the claim was based on a "fortuitous collision." The investigator concludes "...the duration and characteristics of treatment are not consistent with the severity of the impact. The minor nature of the collision infers he has exploited his involvement in this accident in an opportunistic fashion." Mr. Carr states the reports note the damage to the cab was "superficial in nature and limited to the point of impact." He also states in order to objectively establish the injuries were unlikely to have resulted from the accident, a biomechanical review is recommended. He opines the MV- 104 and police accident report are vague and do not provide enough detail to establish how the collision occurred and notes there is conflicting and/or information lacking that was not resolved by the testimony of the Assignor. He indicates a statement by the driver would be needed to ascertain a more descriptive and accurate account of how the accident occurred. Additionally, he states peer reviews would be recommended to determine if the injuries claimed are causally related to the accident.

*I find the evidence set forth by Respondent does not support its defense. I note the biomechanical report is **not being considered** nor has a **statement from the driver** been submitted in evidence. Also, included in evidence is an Independent Medical Examination ("IME") conducted by Dr. Brian Wolin, D.C., which is dated 1/4/22 and which terminates further chiropractic benefits for this Assignor. He states the subjective complaints of tenderness were not correlated by objective findings and therefore there was no further need for chiropractic treatment. I note this IME was performed **after the shoulder brace and game ready units were provided** in November and December of 2021. There is **no discussion** whatsoever discussing causality either in the IME nor has there been a report or expert review set forth to establish lack of causality.*

As to the biomechanical report, I noted in the linked award [AAA Award No. 17-22-1248-3371](#).

"As to the biomechanical report included in evidence by Omid Komari, Ph.D., I first note that the Mr. Komari is not a medical doctor but a Ph.D. He does include that he has 8 years' experience in the areas of mechanical engineering, injury biomechanics, and injury causation and has provided accident reconstruction and biomechanical analyses, depositions and testimony and/or on site investigation. He notes the list of the records reviewed, states what biomechanics is, discusses Newton's Laws of Motion and states his accident analysis. He opines that the impact along with the estimated repair and review of the police report support that the accident was a "minor" sideswipe collision. He discusses the Assignor's position in the car and the body movement and motions and that the Assignor "might have made contact" with the occupant

compartment. He opines any contact with the interior compartment would have been minimal. Mr. Komari concludes the Assignor's injuries are not causally related to the accident and with the exception of minor strains or sprains, the evidence supports there were no acute injuries to the Assignor's spine and left shoulder.

After a careful review of the credible relevant evidence and arguments set forth by respective counsel, and taking into consideration the findings in the linked awards, I find Respondent's defense cannot be sustained. Mr. Komari speaks about injuries and two types of shoulder pathology (i.e., labral and rotator cuff tears), which would require two completely different mechanisms to be produced in a traumatic manner, suggesting a non-traumatic and degenerative etiology for the Assignor's left shoulder complaints. However, he does not possess the level of expertise necessary to make such determinations. The entire "injury analysis" is contradicted by the medical reports in evidence, which specifically state the injuries were the result of a motor vehicle accident. Additionally, I note, Mr. Komari never inspected the vehicle. His analysis is purely based upon the review of reports, transcripts, billing review, notes and records. I am not persuaded by same as there is not a thorough review of the vehicle especially when discussing angles of impact.

Mr. Komari notes the Assignor's "body might have made contact with the occupant compartment in front of his seated position and/or to her right, such as the rear passengers side door during his rebound motions" yet states that interior structures would be minimal. This assumed all individuals have the same reaction to trauma notwithstanding age and other variables, which is not a credible argument as all individuals react differently to trauma. Again, this would have to be a determination made by a medical professional which was not done here.

Lastly, as noted in the linked awards as to causality, I note, in Mount Sinai v. Triboro Coach, 263 A.D. 2d. 11 (Second Dep't, 1999), the Court stated that the insurer has the burden of coming forward with proof in an admissible form to establish the fact or evidentiary foundation for its belief that the patient's condition was unrelated to the motor vehicle accident. Moreover, the insurer must show that the injury was not related to the accident at all. It must show how, when and where the injury happened and that it was not aggravated or exacerbated by the accident. The insurer's proof may not be vague, conclusory, inconsistent or unsupported by records. In Kingsbrook Jewish Medical Center v. Allstate Ins. Co., 61 A.D.3d 13, (A.D. 2d. Dep't, 2009) the Appellate Division, ruled that exacerbations of pre-existing conditions are covered by No-Fault, and that causation is presumed under the New York No-Fault law. Respondent has not supported this causality defense."

There has been no new evidence set forth as advised by Respondent's counsel. Based upon my prior findings, I award the claim.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered...The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Orthopedic Rehabilitation a/a/o "I.B." v. Country-Wide Insurance Co., AAA Case No. 17-R-991-14272-3, stated, in relevant part, that "*the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at [his/her] decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents*".

Applicant is awarded \$2088.70, plus interest, an attorney's fee and the arbitration filing fee, as outlined below in Sections A through D below.

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	Status
	Bronx County Medical Care PC	07/07/21 - 07/07/21	\$483.88	Awarded: \$483.88
	Bronx County Medical Care PC	08/11/21 - 08/11/21	\$407.53	Awarded: \$407.53
	Bronx County Medical Care PC	09/08/21 - 09/08/21	\$407.53	Awarded: \$407.53
	Bronx County Medical Care PC	10/20/21 - 10/20/21	\$407.53	Awarded: \$407.53
	Bronx County Medical Care PC	12/01/21 - 12/01/21	\$127.41	Awarded: \$127.41
	Bronx County Medical Care PC	01/05/22 - 01/05/22	\$127.41	Awarded: \$127.41
	Bronx County Medical Care PC	02/09/22 - 02/09/22	\$127.41	Awarded: \$127.41
Total			\$2,088.70	Awarded: \$2,088.70

B. The insurer shall also compute and pay the applicant interest set forth below. 05/01/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest on the above-awarded amount shall be computed and paid at a rate of 2% per month, simple, commencing on the date the claim was filed in arbitration and ending with the date of payment of the award.

C. Attorney's Fees

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

An attorney's fee of 20% shall be paid on the sum total of the awarded claim plus interest, subject to a maximum of \$1,360.

- 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 Nassau

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

12/20/2023
(Dated)

Maryann Mirabelli

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:
e43693975b769b5273434c221389620e

Electronically Signed

Your name: Maryann Mirabelli
Signed on: 12/20/2023