

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Cross Bay Orthopedic Surgery PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1292-4761

Applicant's File No. BT23-226475

Insurer's Claim File No. 1118356-02

NAIC No. 16616

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 12/19/2023
Declared closed by the arbitrator on 12/19/2023

Heather Landeros, Esq from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Fontini Lambrianidis, Esq from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$6,908.46**, 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 that the date interest accrues if the Applicant prevails is March 26, 2023.

3. Summary of Issues in Dispute

Whether the Assignor, a 24-year-old male ("KM") on the date of the accident ("DOA") who is the eligible injured party ("EIP"), injured in an alleged motor vehicle accident

("MVA") on August 14, 2022, surgical medical services on dates of service ("DOS") November 11 & 26, 2022, and whether these services were correctly billed in the sum of \$6908.46 and timely submitted by the Applicant,

Whether the Respondent can maintain its defense that the:

"Entire claim is denied based on examination under oath conducted 11/17/22 American Transit is asserting a lack of coverage, as it has established the 'fact or founded belief' that the claimant's treated condition was unrelated to the motor vehicle accident"?

4. Findings, Conclusions, and Basis Therefor

This matter falls under the First Amendment to Regulation 68D and, as such, only the documents submitted by the Applicant at the time of filing and by the Respondent during the conciliation will be considered. Therefore, all documents contained in the ADR Center at the time of the Hearing have been considered.

An Arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 NYCRR 65-45(0)(1).

Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms with the Insurance Laws and the New York State Insurance Department Regulations. **Matter of Medical Society v. Serio**, 100 N.Y.2d 854, 768 N.Y.S.2d 423 (2003).

There are two bills for DOS November 11 & 26, 2022, with a total sum in dispute of \$6908.46 on the AR-1. Applicant submitted these bills to Respondent and Respondent issued a global NF-10 dated November 22, 2022, and a specific denials dated January 22 & 27, 2023, that denied payment of all bills based on Respondent's investigation and the Assignor's EUO testimony at the November 17, 2022, EUO that the injuries were not the result of the MVA on August 14, 2022.

Fee Schedule

The Respondent submitted the professional fee coder's audit of Daniel J. Tucker, Esq, CPC, submitted May 5, 2023, who calculates the correct sum for the disputed medical services to be \$4781.88.

The Applicant did not submit a professional fee coder's audit in support of the original sum billed, \$6908.46.

The Parties requested at the hearing that I take Judicial Notice of the NYSWC Fee Schedule and its Associated Rules. I have reviewed the submissions of the parties and their arguments at the hearing, and I find the Respondent's Fee Audit to be more persuasive than the arguments of the Applicant as to the correct NYSWC Fee Schedule sums for the disputed medical services, thus if the Applicant prevails, they will be awarded \$4781.88.

Prima facie Case

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).

Founded Belief Defense

Respondent's November 17, 2022, general denial states in Box 33-Reason for Denial:

"Entire claim is denied based on examination under oath conducted 11/17/22 American Transit is asserting a lack of coverage, as it has established the "fact or founded belief" that the claimant's treated condition was unrelated to the motor vehicle accident."

Upon careful review of the evidence presented I find that Respondent's denial is not properly sustained. At the outset, I find that the denial is fatally defective as it fails to properly apprise Applicant as to the basis upon which the denial is premised. The denial relies on the Assignor's EUO testimony, but never sets forth why the Assignor's testimony and/or investigation establishes that the Assignor's injuries did not arise out of an insured event and /or are not casually related to the accident.

I have read the entire transcript and was unable to determine from the face of the denial, or the EUO testimony, the basis upon which the denial was premised. In fact, Respondent did not submit a pre-hearing brief or outline the EUO testimony to demonstrate how the EUO testimony and/or evidence supports the denial.

At the November 17, 2022, EUO, the Assignor testified that he was a passenger in a taxi at the time of accident, that he was behind the driver, the taxi was sideswiped on the driver's side, and his left knee, ankle and foot contacted the door and he was tossed back and forth injuring his neck and lower back while travelling to a friend's house that evening when the MVA occurred on August 14, 2022. The Respondent's representative at these EUO's did not ask either the Assignor the necessary follow-up questions that would have resulted in sworn testimony upon which to support their defense.

As concerns Respondent's "investigation" there is absolutely no documentation submitted relevant to any investigation which supports the Respondent's defense the accident was not the competent producing factor of the Assignor's and Claimant's injuries. The Respondent relies upon no NYPD MV-104 from the scene, but the

Assignor testified that the driver drove after the vehicle the struck their car, no E/R immediately, the first medical exam was 72 hours after the MVA, and the Assignor swears they did not sustain an immediate traumatic injury. Applicant's Attorney opined that even if true and aggregated their defense would fail for none of these actions are prohibited by the No-fault statute and 65-3.14(a) The Scope of Coverage refutes their claim that only traumatic injuries are reimbursable.

Upon careful review of the evidence presented, I find Respondent's denial disingenuous. 11NYCR 65-3.2, Claim practice principles to be followed by all insurers, provides in relevant part: (a) Have as your basic goal is the prompt and fair payment to all automobile accident victims, (b) Assist the applicant in the processing of a claim. Do not treat the applicant as an adversary.

I have reviewed the submissions of the parties, the EUO testimony, the NF-10s, and the arguments made by the respective counsel at the hearing, and I have not been presented with any legal arguments or admissible evidence that will allow me find that the Respondent's defense can be sustained for the record in front of me is devoid of a shred of evidence to support Respondent's defenses that injuries did not arise out of an insured event and/or are not casually related to a covered incident.

The Applicant prevails and is awarded \$4781.88.

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
	Cross Bay Orthopedic Surgery PC	11/11/22 - 11/11/22	\$203.76	Awarded: \$203.76
	Cross Bay Orthopedic Surgery PC	11/26/22 - 11/26/22	\$6,056.64	Awarded: \$4,088.26
	Cross Bay Orthopedic Surgery PC	11/26/22 - 11/26/22	\$648.06	Awarded: \$489.86
Total			\$6,908.46	Awarded: \$4,781.88

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/26/2023 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. 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 Queens

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.

12/21/2023
(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:
bf62811e2e6c3a647ec92f3cb9263e58

Electronically Signed

Your name: Matthew J. Cavalier
Signed on: 12/21/2023