

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bergenfield Surgical Center
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1316-5240

Applicant's File No. 00118960

Insurer's Claim File No. 1109867-06

NAIC No. 16616

ARBITRATION AWARD

I, Nancy S. Linden, 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: EL

1. Hearing(s) held on 06/25/2024
Declared closed by the arbitrator on 06/25/2024

Sasha Hochman, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Joshua Mak, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,733.51**, 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 Assignor, EL, a 34-year-old male, was an unrestrained back-seat passenger in a motor vehicle involved in a motor vehicle accident on February 26, 2022. Following the accident, EL sought and received treatment including left knee surgery performed on June 14, 2022. Applicant billed Respondent for facility fees related to the afore-mentioned service. Thereafter, Respondent timely denied Applicant's claim based upon the May 2, 2023 peer review of Nicholas Delaney, MD. The issue presented is whether Respondent properly denied Applicant's bill based upon a lack of causality.

4. Findings, Conclusions, and Basis Therefor

The case was decided based upon the submissions of the parties contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives made at the arbitration hearing. There were no witnesses.

Applicant established its prima facie entitlement to reimbursement for no fault benefits based upon the submission of a properly completed claim form setting forth the amount of the loss sustained and that payment is overdue. Mary Immaculate Hospital v. Allstate Ins. Co., 5 AD 3d 742, (2d Dept. 2004). Westchester Medical Center v. Lincoln General Ins. Co., 60 AD 3d 1045 (2d Dept. 2009). Therefore, the burden now shifts to Respondent to prove its defense.

As a general rule, causation is presumed as "it would not be reasonable to insist that (an applicant) must prove as a threshold matter that (a) patient's condition was 'caused' by the automobile accident" Mount Sinai Hospital v. Triboro Coach, 263 A.D.2d 11, 20, 699 N.Y.S.2d 77 (2nd Dept. 1999). Consequently, the burden is on the insurer to come forward with proof establishing by "fact or founded belief" that the claimed injuries have no correlation to the accident. Mount Sinai Hospital v. Triboro Coach, 263 A.D.2d 11, 19 (2nd Dept. 1999) (quoting Central Gen. Hosp. v. Chubb Group of Ins. Cos., 90 N.Y. 2d 195, 199 (1997)).

In support of its contention that the performed left knee surgery was not causally related to the February 26, 2022 motor vehicle accident at issue, Respondent relies on the peer review of Nicholas Delaney, MD. Dr. Delaney asserts that, based upon medical records reviewed, the injuries sustained by EL are not causally related to the loss at issue. Dr. Delaney's findings rely upon the April 28, 2023 intra-operative photo review prepared by Matthew Skolnick, MD and the January 26, 2023 independent radiology review of the April 5, 2022 left knee MRI performed by Sheldon Feit, MD. Specifically, Dr. Skolnick's conclusion that the "intraoperative photos failed to indicate any traumatic findings that would necessitate a need for surgical intervention for this claimant", and, with respect to the findings of the original MRI report, Dr. Feit's statement "I do not agree there is evidence of tearing of the patellar tendon". He does, however, "agree...regarding the presence of an effusion, yet states "there are no abnormalities causally related to the accident of 02/26/2022". Notably, the April 5, 2022 MRI report found "a horizontal cleavage tear of the anterior horn of the lateral meniscus", "a longitudinal tear along the free edge of the body of the lateral meniscus", and a "low-grade interstitial tear of the proximal fibers of the patellar tendon". In addition, the March 2, 2022 initial physiatric evaluation of Steven Ross, DO, performed 5 days after the date of loss, notes complaints of left knee pain with physical examination of the left knee revealing "tenderness to palpation", "painful range of motion", decreased ranges of motion, and "pain with valgus and varus maneuver". Furthermore, the operative report confirmed Dr. Winiarsky's pre-operative diagnosis of "left knee lateral meniscal tear". Based on the foregoing, Respondent has not sustained its lack of causality defense. It should be noted that I reached the same conclusion in the linked award 17-22-1267-1664, which, notably, was affirmed on appeal.

As such, upon a preponderance of the evidence in the electronic case file and following consideration of the arguments raised at the hearing, I find that Respondent has not established its defense on this record. Applicant's claim is, therefore, granted.

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
	Bergenfield Surgical Center	06/14/22 - 06/14/22	\$4,733.51	Awarded: \$4,733.51
Total			\$4,733.51	Awarded: \$4,733.51

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/15/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant

"does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850." Id. The minimum attorney fee that shall be awarded is \$60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6(i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360." 11 NYCRR 65-4.6(d)

- 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 Suffolk

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

06/26/2024

(Dated)

Nancy S. Linden

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:
b087cfe00d930fb2b025b28ccf108892

Electronically Signed

Your name: Nancy S. Linden
Signed on: 06/26/2024