

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-24-1339-1229

Applicant's File No. AR24-23564

Insurer's Claim File No. 1080134-1

NAIC No. 16616

ARBITRATION AWARD

I, Patricia Daugherty, 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 07/25/2024
Declared closed by the arbitrator on 07/25/2024

Alek Beynenson from The Beynenson Law Firm, PC participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$1,199.41**, 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

Assignor, "RAB, a 62-year-old male," was involved in a motor vehicle accident on February 15, 2020. At issue in this case is a claim in the amount of \$1,199.41 for physical therapy services rendered to Assignor August 26, 2020 through March 3, 2021. There are 4 bills in dispute. Respondent denied the two bills for treatment rendered August 26, 2020 through September 27, 2020 asserting a lack of coverage defense and denied the remaining two bills asserting a lack of medical necessity defense pursuant to the independent medical examination of Francisco Santiago, M.D. conducted on September 8, 2020. In a related matter between another provider on behalf of the same Assignor against the same Respondent an arbitration award was rendered in favor of the

applicant therein finding that Respondent failed to establish its lack of coverage defense. The issues to be determined are: 1.) whether the doctrine of collateral estoppel applies and if it not, whether Respondent established its lack of coverage defense; and 2.) whether the services rendered February 10, 2021 through March 3, 2021 were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Coverage

Respondent argues that based upon Assignor's March 25, 2022 EUO testimony there are inconsistencies, including discrepancies and material misrepresentation rising to a fact or founded belief that Assignor's injuries did not arise out of an insured event and were not causally related to the accident.

In the related matter AAA No. 17-22-1254-1589, Matter of Advanced Orthopedics & Joint Preservation, PC vs. American Transit Ins. Co., (03/21/2023), Arbitrator Rosenberger issued an award finding that Respondent's proofs failed to meet Respondent's burden of establishing that Assignor's injuries were unrelated to the subject motor vehicle accident failed to establish Respondent's lack of coverage defense.

The doctrine of collateral estoppel precludes a party from relitigating "an issue which has previously been decided against him in a proceeding in which he had a fair opportunity to fully litigate the point." Kaufman v. Lilly & Co., 65 N.Y.2d 449 (1985), citing Gilberg v. Baribieri, 53 N.Y.2d 285, 291; (1981) It is a doctrine intended to reduce litigation and prevent unfairness in allowing a party a chance to have a "second bit of the apple." To invoke the doctrine, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination Gilberg v Baribieri, supra, at 291; see also Schwartz v Public Administrator, 24 N.Y.2d 65 (1969). The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action (*see*, Ryan v New York Tel. Co., 62 N.Y.2d 494 (1984).

I find that the elements to invoke the doctrine of collateral estoppel have been established and Respondent is precluded from relitigating its lack of coverage defense.

This portion of Applicant's claim is granted.

Medical Necessity

Respondent denied the bills for treatment rendered February 1, 2021 through March 3, 2021 pursuant to Dr. Santiago's September 8, 2020 IME findings.

The burden is on the insurer to prove that the medical treatment performed was not medically necessary. See A.B. Medical Services PLLC v. Geico, 2 Misc.3d 26, 773 N.Y.S.2d 773 (App. Term 2d and 11th Jud Dists 2003).

A defense predicated on an IME must be supported by an IME report that establishes a factual basis and medical rationale for the asserted lack of medical necessity of further health care services. See, Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 2008 NY Slip Op 51863(U), 2008 WL 4222084 (App. Term 2nd & 11th Dists. Sept. 3, 2008); AJS Chiropractic, P.C. v. Mercury Ins. Co., 2009 NY Slip Op 50208(U), 22 Misc 3d 133(A) (App Term, 2nd & 11th Dists 2009).

When an insurer presents sufficient evidence establishing a lack of medical necessity, the burden then shifts back to the applicant to present its own evidence of medical necessity. See West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131(A) (App. Term 2d & 11th Jud Dists 2006).

On September 8, 2020, Assignor presented to Francisco H. Santiago, M.D. for a physiatric/ acupuncture IME. The examination was normal with no documented positive objective findings. Dr. Santiago diagnosed Assignor's injuries as resolved and determined that from a physiatric and acupuncture point of view, no further treatment was medically necessary.

Pursuant to Dr. Santiago's report, Respondent terminated all physical medicine and rehabilitation treatment effective November 23, 2020.

Also on September 8, 2020, Assignor presented to Bonnie, Corey, D.C. for a chiropractic IME. The examination revealed multiple positive findings. Dr. Corey diagnosed Assignor with unresolved post-cervical and lumbar sprain/strains. Nonetheless, Dr. Corey determined that no further chiropractic treatment was medically necessary.

After a thorough review of the record, I find that Respondent's medical examinations performed on the same day reveal contradictory findings. Respondent's own experts do not agree that Assignor's injuries were resolved and, as such, Respondent has not set forth a sufficient factual basis and medical rationale that Assignor's injuries were resolved at the time of the IMEs

This portion of Applicant's claim is granted.

Based on the foregoing, Applicant's claim is granted in its entirety.

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
	Brooklyn Medical Practice, PC	08/26/20 - 08/31/20	\$258.60	Awarded: \$258.60
	Brooklyn Medical Practice, PC	09/01/20 - 09/27/20	\$544.40	Awarded: \$544.40
	Brooklyn Medical Practice, PC	02/10/21 - 02/25/21	\$362.77	Awarded: \$362.77
	Brooklyn Medical Practice, PC	03/03/21 - 03/03/21	\$33.64	Awarded: \$33.64
Total			\$1,199.41	Awarded: \$1,199.41

B. The insurer shall also compute and pay the applicant interest set forth below. 03/05/2024 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. A claim is overdue when it is not paid within 30 days after an insurer receives proof of claim. (Insurance Law §5106[a]; 11 NYCRR 65-3.8(a)(1). All overdue benefits shall bear interest 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(c).

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee, in accordance with 11 NYCRR §65-4.6. Therefore, the insurer shall pay the applicant an attorney's fee of 20% of benefits plus interest, with no minimum fee and a maximum fee of \$1,360.00.

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

08/23/2024
(Dated)

Patricia Daugherty

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:
62bb7419216ff6a57e0a3f2ae0f04969

Electronically Signed

Your name: Patricia Daugherty
Signed on: 08/23/2024