American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC (Applicant)	AAA Case No.	17-23-1295-0055
	Applicant's File No.	172.349
- and -	Insurer's Claim File No.	1100137-02
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Anne Malone, 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 08/30/2024
   Declared closed by the arbitrator on 08/30/2024

   Sakrit Srivastava, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **$1,590.16**, 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 47 year old EIP reported involvement in a motor vehicle accident on July 5, 2021; claimed related injury and underwent office visits and physical therapy treatment provided by the applicant from July 11, 2021 to September 12, 2022.

   The applicant submitted a claim for these medical services, the respondent contends that the bill for dates of service July 11, 2021 to July 29, 2021 was not received.

   Payment of bills for dates of service December 17, 2021, April 8, 2022 and May 20, 2022 were denied by the respondent based on the IME of the EIP by David

Manevitz, D.O. which was performed on November 3, 2021. The IME cut-off was effective on December 15, 2021.

Payment of the bills for dates of service April 8, 2022 to April 29, 2022, May 6, 2022 to May 25, 2022, July 22, 2022, August 5, 2022 and September 12, 2022 were denied by the respondent based on the IME of David Manevitz, D.O. which was performed on May 25, 2022. The IME cut-off was effective on June 14, 2022.

The respondent also asserted a fee schedule defense.

The issues to be determined at the hearing are:

Whether the applicant established its entitlement to no fault benefits for services rendered from July 11, 2021 to July 29, 2021.

Whether the respondent established that the medical services provided by the applicant from December 17, 2021 to September 22, 2022 were not medically necessary.

Whether the respondent established its fee schedule defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Applicant's *prima facie* entitlement to no fault benefits for dates of service July 11, 2021 to July 29, 2021

The respondent contends that the bill for dates of service July 11, 2021 to July 29, 2021 was not received.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

The applicant failed to provide proof of mailing for the bill at issue.

Based on the foregoing, the applicant has not met its initial burden to establish that the "prescribed statutory billing forms had been mailed and received by the respondent" and therefore did not establish with evidentiary proof its *prima facie* showing that the bill at issue was even mailed.

Under these circumstances, the burden did not shift to the respondent to establish that it was not received.

Therefore, the claim for dates of service July 11, 2021 to July 29, 2021 is dismissed with prejudice.

Medical Necessity

To support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

The Civil Courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his/her findings; and 3) the peer review report fails to provide specifics as to the claim at issue; is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the services provided to the EIP from December 17, 2021 to May 20, 2022 were not medically necessary, the respondent relied upon the report of independent medical examinations of the EIP by Dr. Manevitz on November 3, 2021, which documented limitations of range of motion in the cervical spine and left shoulder. The diagnosis included resolving cervical, left shoulder and left knee resolving and resolving stagnation of Chi.

Based upon the physical examination which documented positive objective findings and medical records reviewed, Dr. Manevitz determined that there was medical necessity for further treatment from a physical medicine and rehabilitation and acupuncture standpoint. This included physical therapy and acupuncture two times a week for six weeks and left shoulder injection within six to eight weeks. Dr. Manevitz recommended that the EIP should be re-evaluated

following this course of treatment. He also determined that the EIP had a mild disability but there was no need for durable medical equipment, household help or special transportation.

Based on the foregoing, the respondent failed to establish its defense of a lack of medical necessity for dates of service December 12, 2021 to May 20, 2022.

The respondent also contends and the denials state, that the bills for dates of service April 18, 2022 to April 29, 2022, May 6, 2022 to May 25, 2022, July 17, 2022, August 5, 2022 and September 12, 2022 were denied based on the IME of the EIP by Dr. Manevitz which was performed on May 25, 2022.

However, the submissions do not contain a report of an IME conducted by Dr. Manevitz on that date.

Based on the foregoing, the respondent did not its defense of a lack of medical necessity for the aforementioned dates of service.

Therefore, an award will be issued in favor of the applicant for the bills denied for a lack of medical necessity pursuant to the appropriate fee schedule.

Fee Schedule

The respondent raised fee schedule issues for numerous bills, including ones that were denied for a lack of medical necessity and other dates of service which were not denied on those grounds.

To prevail in its fee schedule defense, the respondent must demonstrate by competent evidentiary proof that the applicant's claims are in excess of the appropriate fee schedule. If the respondent fails to do so, its defense of noncompliance with the New York Workers' Compensation Medical Fee Schedule cannot be sustained. See Continental Medical, P.C. v Travelers Indemnity Co., 11 Misc. 3d 145A (App. Term 1st Dept. 2006.)

An insurer fails to raise a triable issue of fact with respect to a defense that the fees charged were not in conformity with the Workers' Compensation fee schedule when it does not specify the actual reimbursement rates which formed the basis for its determination that the claimant billed in excess of the maximum amount permitted. See St. Vincent Medical Services, P.C. v. GEICO Ins. Co., 29 Misc.3d 141(A), 907 N.Y.S.2d 441 (App. Term 2d, Dec. 8, 2010.)

A fee schedule defense does not always require expert proof. There are two fee schedule scenarios. The first involves the basic application of the fee codes and simple arithmetic. The second scenario involves interpretation of the codes and often requires testimony and expertise beyond that of a lay individual. I find that the fee schedule issue presented in this case is analogous to the former scenario and does not require an expert opinion.

After a review of all of the bills and denials related to this claim, I find that a total of $929.40 is due to the applicant based on the New York Workers' Compensation Medical Fee Schedule.

The award will contain a breakdown of the amounts owed and/or proper denials by the respondent for each of the bills at issue.

Accordingly, the applicant is awarded $929.40 and the remainder of the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. 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**

	Brooklyn Medical Practice, PC	**07/07/22 - 07/29/22**	**$134.56**	**Awarded: $122.60**
	Brooklyn Medical Practice, PC	**05/06/22 - 05/25/22**	**$162.02**	**Awarded: $122.60**
	Brooklyn Medical Practice, PC	**11/01/21 - 11/24/21**	**$111.72**	**Awarded: $87.80**
	Brooklyn Medical Practice, PC	**08/05/22 - 08/05/22**	**$33.64**	**Awarded: $30.65**
	Brooklyn Medical Practice, PC	**01/26/22 - 01/26/22**	**$2.99**	**Denied**
	Brooklyn Medical Practice, PC	**07/22/22 - 07/22/22**	**$87.80**	**Awarded: $87.80**
	Brooklyn Medical Practice, PC	**09/12/22 - 09/12/22**	**$87.80**	**Awarded: $87.80**
	Brooklyn Medical Practice, PC	**05/20/22 - 05/20/22**	**$87.80**	**Awarded: $87.80**
	Brooklyn Medical Practice, PC	**06/02/22 - 06/03/22**	**$67.28**	**Awarded: $61.30**
	Brooklyn Medical Practice, PC	**12/02/21 - 12/17/21**	**$8.97**	**Denied**
	Brooklyn Medical Practice, PC	**09/03/21 - 09/28/21**	**$17.36**	**Denied**
	Brooklyn Medical Practice, PC	**04/08/22 - 04/29/22**	**$134.56**	**Awarded: $122.60**

	Brooklyn Medical Practice, PC	**03/18/22 - 03/30/22**	**$5.98**	**Denied**
	Brooklyn Medical Practice, PC	**10/04/21 - 10/28/21**	**$108.73**	**Awarded: $87.80**
	Brooklyn Medical Practice, PC	**07/11/21 - 07/29/21**	**$478.03**	**Denied**
	Brooklyn Medical Practice, PC	**08/04/21 - 08/31/21**	**$27.28**	**Denied**
	Brooklyn Medical Practice, PC	**09/12/22 - 09/12/22**	**$33.64**	**Awarded: $30.65**
Total			**$1,590.16**	**Awarded: $929.40**

B. The insurer shall also compute and pay the applicant interest set forth below. 04/19/2023 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." See 11 NYCRR §64-3.9(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. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. 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 was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 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's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of $1,360.00. See 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 CT
SS :
County of Fairfield

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

09/05/2024
(Dated)

Anne Malone

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:
c07c0e498866311e7e20401367055d62

Electronically Signed

Your name: Anne Malone
Signed on: 09/05/2024