

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. 17-24-1339-1177

Applicant's File No. AR24-23641

Insurer's Claim File No. 1065258-01

NAIC No. 16616

ARBITRATION AWARD

I, Cathryn Roberts, 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 08/16/2024
Declared closed by the arbitrator on 08/16/2024

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

Helen Cohen, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,962.95**, 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 EIP, (R.L-F.) was a then 55 year old male, involved in a motor vehicle accident on 07/23/19. At issue in this case is \$1,962.95 for reimbursement of physical therapy treatment, performed 02/07/23-11/27/23. Respondent denied this claim based upon the following two grounds: 1) the assertion that the EIP was in the course of their employment and is eligible for workers' compensation, and 2) based upon a lack of medical necessity with an Independent Medical Examination, performed by Dr. Santiago on 09/08/20, with an effective cut-off date for treatment of 09/22/20.

However, at the hearing Respondent raised a policy exhaustion defense. Applicant acknowledged that there are no additional PIP benefits available. Yet, Respondent

contends that the EIP has not returned an executed NF-11 Form that would trigger additional PIP benefits.

Therefore, the issue presented is whether Respondent's policy exhaustion defense can be sustained and if so, whether additional PIP benefits are reimbursable.

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.

A review of the competent evidence in the record reveals that Applicant established a prima facie case of entitlement to reimbursement of its claim, by submitting evidence that the prescribed statutory billing form was mailed and received, and that the Respondent failed to either pay or deny the claim within the requisite 30-day period. . Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Once Applicant established its prima facie case, the burden of proof shifts to Respondent to come forward with admissible evidence demonstrating the existence of a material issue of fact. Amaze Medical Supply Inc. v. Allstate Insurance Co. 3 Misc3d at 133.

At the outset, Respondent counsel asserted that the underlying basic coverage had been exhausted. Respondent demonstrated that \$50,000.00 in no-fault benefits had been paid by the submission of the ledger and payment log. While parties' acknowledged that there was excess APIP coverage, Respondent stated that additional PIP reimbursement had not yet been triggered as the EIP had failed to return a signed NF-11 Form in accordance with NYCRR 65-3.5h. To date, Respondent stated that the NF-11 Form has not been executed and returned. I concur. The record contains two letters and supporting affidavit, supporting the Insurer's request for a signed NF-11 Form.

Accordingly, I find that Respondent is not obligated to make any payment for additional PIP benefits prior to the showing of the returned executed NF-11 Form. Applicant's claim is dismissed without prejudice.

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 claim is DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Suffolk

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

09/12/2024
(Dated)

Cathryn Roberts

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
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Electronically Signed

Your name: Cathryn Roberts
Signed on: 09/12/2024