

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. 17-24-1339-1183

Applicant's File No. AR24-23619

Insurer's Claim File No. 1122561

NAIC No. 16616

ARBITRATION AWARD

I, Lester Hill, 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 09/13/2024
Declared closed by the arbitrator on 09/13/2024

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, **\$3,584.94**, 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

Were the office evaluations and physical therapy provided to the EIP from July 6, 2023 through November 30, 2023 medically unnecessary based upon the IME conducted by Dr. Douglas Unis on June 23, 2023? The 48-year-old male EIP was involved in a motor vehicle accident on November 25, 2022 and received treatment for injuries to the neck, low back, left shoulder, and left knee.Him

4. Findings, Conclusions, and Basis Therefor

At issue is whether the office evaluations and physical therapy provided to the EIP from July 6, 2023 through November 30, 2023 were medically unnecessary.

The basis of the respondent's timely denials is the IME conducted by Dr. Douglas Unis on June 23, 2023.

I have reviewed the documents contained in the electronic case folder as of September 13, 2024. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on September 13, 2024.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *Countrywide Ins. Co v. 563 Grand Med.*, P.C. 50 A.D. 3d 313 (1st Dept. 2008); *A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co.*, 39 A.D. 3d 779 (2d Dept. 2007).

An insurance carrier must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. *Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co.*, 2006 NY Slip Op 50963(U) (App Term 1st Dept. 2006).

The EIP was involved in a motor vehicle accident on November 25, 2022. The EIP was treated at the emergency room of Maimonides Hospital on the day of the accident. The EIP presented to North Shore Family Chiropractic on November 27, 2022 with complaints of radiating neck and low back pain. The examination reported reduced range of motion of the cervical and lumbar spine and positive orthopedic testing. The EIP presented to the applicant on November 29, 2022 with complaints of pain in the neck, low back, left shoulder and left knee. The examination reported reduced range of motion of the cervical and lumbar spine with tenderness and positive orthopedic testing for the lumbar spine, reduced range of motion with positive orthopedic testing for the left shoulder and left knee. The EIP was placed on a course of physical therapy and chiropractic treatment. The EIP underwent an MRI of the left knee on December 5, 2022 which reported tears of the medial meniscus and ACL and a prominent contusion. The EIP presented to Unicorn Acupuncture on December 6, 2022 with complaints of pain in the neck, mid back, low back, left shoulder and right knee. The examination reported positive acupuncture findings. The EIP underwent an MRI of the cervical spine on December 13, 2022 which reported disc herniation at C6-C7 and disc bulges from C4 through C6. The EIP presented to North Shore Family Chiropractic on January 11, 2023 with complaints of pain in the neck, low back, left shoulder and left knee. The EIP presented to Advanced Orthopedics on January 16, 2023 with complaints of pain in the left knee. The examination reported reduced range of motion of the left knee reduced muscle strength with positive orthopedic testing consisting of positive McMurray's test and positive patellar apprehension test. The EIP presented to Advanced Orthopedics on April 5, 2023 with complaints of pain in the left knee. The examination reported reduced range of motion of the left knee reduced muscle strength with positive orthopedic testing consisting of positive McMurray's test and positive patellar apprehension test. The EIP was continued on a course of physical therapy and acupuncture treatment. The EIP presented to Advanced Orthopedics on May 8, 2023 with complaints of pain in the left knee. The examination reported reduced range of motion of the left knee, reduced muscle strength with positive orthopedic testing consisting of positive McMurray's test

and positive patellar apprehension test. The EIP underwent surgery to the left knee on May 11, 2023 which reported a postoperative diagnosis of tear of the medial meniscus and synovitis. The EIP presented to the applicant on June 12, 2023 with complaints of pain in the neck, left shoulder and left knee. The examination reported reduced range of motion of the cervical spine, left shoulder and left knee.

Dr. Unis conducted the orthopedic IME on June 23, 2023, at which time the EIP complained of pain in the neck, low back, left shoulder and left knee. The examination reported normal range of motion of the cervical and lumbar spine with negative orthopedic testing and normal neurological findings, normal range of motion and negative orthopedic testing for the bilateral shoulders, elbows, wrists, hips, knees and ankles. The conclusion was that the EIP needed no further orthopedic treatment.

No-Fault benefits were terminated effective July 11, 2023.

The EIP presented to the applicant on August 3, 2023 with complaints of pain in the neck, left shoulder and left knee. The examination reported reduced range of motion of the cervical spine, left shoulder and left knee. The EIP presented to the applicant on October 26, 2023 with complaints of pain in the neck and left knee. The examination reported reduced range of motion of the cervical spine and left knee.

The applicant withdrew the claims without prejudice for treatment rendered to the EIP from November 29, 2022 through March 31, 2023.

With respect to the claim for treatment rendered to the EIP from July 6, 2023 through July 31, 2023, the respondent denied the claim asserting that the applicant exceeded the fee schedule based upon the 12 unit rule and that the claim was previously reimbursed under claim number BR 04065740. However, the respondent submitted no proof with respect to the 12 unit rule as the applicant's claims did not exceed the 12 unit rule nor was there any evidence of prior payment to another medical provider. Additionally, the respondent did not submit any evidence of prior payment of this claim under a different claim number. Accordingly, applicant is awarded \$403.68 for the treatment rendered to the EIP from July 6, 2023 through July 31, 2023.

Dr. Sayeedus Salahin, the principle of the applicant, submitted a rebuttal asserting that the treatment subsequent to the IME cut off was medically necessary. He asserts that the re-examinations of the EIP both prior to and subsequent to the IME cut off document objective symptomology that warrants the treatment rendered to the EIP.

With respect to the claims for treatment rendered to the EIP from August 2, 2023 through November 30, 2023, I find the respondent has not demonstrated by sufficient factual basis and medical rationale that the treatment rendered subsequent to the IME cut off was medically unnecessary. A credible IME report shifts the burden to the applicant to demonstrate medical necessity. I find the reports of the applicant both prior to and subsequent to the IME cut off to be credible, sufficiently detailed, and consistent with the objective evidence including the MRI report of the cervical spine which noted disc herniation and the surgery to the left knee. I find the rebuttal of the treating physician to be credible and consistent with the reports of the applicant of continuing objective

symptomology. Additionally, the reports of the applicant document decreasing symptomology subsequent to the IME cut off which I find to be evidence attesting to the efficacy of the post IME treatment.

Accordingly, applicant is awarded \$1936.58 for the treatment rendered to the EIP from July 6, 2023 through November 30, 2023 and that the claims for treatment rendered to the EIP from November 29, 2022 through March 31, 2023 are withdrawn without prejudice.

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	11/29/22 - 11/29/22	\$149.78	Withdrawn without prejudice
	Brooklyn Medical Practice, PC	12/02/22 - 12/30/22	\$396.41	Withdrawn without prejudice
	Brooklyn Medical Practice, PC	01/02/23 - 01/30/23	\$396.41	Withdrawn without prejudice
	Brooklyn Medical Practice, PC	02/01/23 - 02/27/23	\$302.76	Withdrawn without prejudice
	Brooklyn Medical Practice, PC	03/01/23 - 03/31/23	\$403.00	Withdrawn without prejudice
	Brooklyn Medical Practice, PC	07/06/23 - 07/31/23	\$403.68	Awarded: \$403.68
	Brooklyn Medical Practice, PC	08/02/23 - 08/31/23	\$564.61	Awarded: \$564.61
	Brooklyn Medical Practice, PC	09/05/23 - 09/29/23	\$302.76	Awarded: \$302.76
	Brooklyn Medical Practice, PC	10/03/23 - 10/29/23	\$396.41	Awarded: \$396.41
	Brooklyn Medical Practice, PC	11/03/23 - 11/30/23	\$269.12	Awarded: \$269.12
Total			\$3,584.94	Awarded: \$1,936.58

- 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.

Interest is awarded from of the filing of the AR1 at a rate of 2% per month, simple, ending with the payment of the claim.

C. Attorney's Fees

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

Attorney fees are awarded pursuant to 11 NYCRR 65 - 4.6(e) at a rate of 20% of the awarded claim, including interest, to a maximum of \$1360.00.

- 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 Nassau

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

09/21/2024
(Dated)

Lester Hill

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:
94a0c4c211b0cf475e6613fa28ce8c71

Electronically Signed

Your name: Lester Hill
Signed on: 09/21/2024