American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC (Applicant)	AAA Case No.	17-24-1348-0220
	Applicant's File No.	AR19-11304
- and -	Insurer's Claim File No.	1030237-02
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Thomas Eck, 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 09/30/2024
   Declared closed by the arbitrator on 09/30/2024

   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, **$4,942.74**, 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

   This arbitration arises out of medical treatment for the 53-year-old Assignor (ER) who was involved in a motor vehicle accident on 6/7/2018. The Assignor came under the care of the Applicant who is now seeking reimbursement for physical therapy services provided to the Assignor on 6/18/2018-2/21/2019. Respondent denied these services alleging Workers' Compensation is Primary.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make this decision in reliance thereon.

NON-RECEIPT OF BILL - DOS - 6/18/2018-10/31/2018

The No-Fault Regulations Mandatory Personal Injury Protection Endorsement states:

> "Proof of Claim; Medical, Work Loss, and Other Necessary Expenses. In the case of a claim for health service expenses, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or the other necessary services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation."

The Regulations afford an Applicant the opportunity to submit a reasonable justification for any late notice. See: 11 NYCRR § 65-3.3 (a), and must establish procedures to "ensure due consideration of denial of claims based upon late filings" and give "appropriate consideration for situations where the claimant has difficulty ascertaining the insurer's identity or inadvertently submits a claim to the incorrect insurer". See: Matter of Medical Society of the State of New York v. Serio, 298 A.D.2d 255, (1st Dept. 2002), affd. 100 N.Y.2d 854, (2003); Bronx Expert Radiology v. Clarendon Natl. Ins. Co.,

2009 NY Slip Op 50747(U), 23 Misc.3d 133(A) (App Term 1st Dept., April 20, 2009).

Furthermore, it is incumbent upon the Applicant to provide the insurer with written justification for its untimely submission in order for it to be excused or the insurer should be granted judgment. See: AAA Chiropractic, P.C. and MVAIC, 2010 NY Slip Op 51896(U) (App Term 2d, 11th & 13th Jud. Dists., Nov. 8, 2010); AR Med.Rehabilitation, P.C. v. MVAIC, 27 Misc.3d 135(A), 910 N.Y.S.2d 760 (Table), 2010 N.Y. Slip Op. 50828(U), 2010 WL 1910908 (App. Term 2d, 11th & 13th Dists. May 10, 2010).

11 NYCRR § 65-3.5 (l) requires the insured to conduct the proper review and supervisor review regarding purpose of reasonable justification. The section goes on to state as follows: "The insured shall establish standards for reviews of its determination that Applicants have provided late notice of claim or late proof of claim. … In the case of proof of claim, such standards should include but not limited to appropriate consideration for emergency care providers, demonstrated difficulty in ascertaining the identity of the insurer and inadvertent submission to the incorrect insurer. The insurer shall establish procedures based upon objective criteria, to ensure due consideration of denial of claims based upon late notice or late submission of proof of claim, including supervisory review of all such determinations…"

Respondent argues they have not received bills for dates of service 6/18/2018-10/31/2018 in the total amount of $2999.89.

The Applicant has submitted USPS date stamped proof of mailing establishing that the bills were mailed to the Respondent. The proof of mailing lists the Assignor's name, Respondent's name and address, Applicant's name and address, dates of service, amount in dispute, etc.

After careful review of the evidence and arguments made by the parties at the hearing, I find the Applicant has submitted sufficient proof of mailing to establish that the bills for dates of service 6/18/2018-10/31/2018 were submitted to the Respondent. Therefore, based on a preponderance of the evidence, I find in favor of the Applicant and hereby award **$2999.89**.

WORKERS' COMPENSATION PRIMARY - DOS - 11/7/2018-2/21/2019

Respondent denied these services stating:

> CLAIMANT IS ELIGIBLE FOR WORKERS' COMP, AS CLAIMANT WAS IN THE COURSE OF EMPLOYMENT. AS A RESULT THIS CLAIM MUST BE SUBMITTED TO THE EMPLOYER'S WORKERS' COMPENSATION CARRIER.

Where the evidence is sufficient to raise a question of fact as to whether the eligible injured person was acting as an employee at the time of the accident, the issue must be resolved by the Workers' Compensation Board. A.B. Medical Services, PLLC v. American Transit Ins. Co., 24 Misc.3d 75 (App. Term 9th & 10th Dists. June 18, 2009); Response Equipment, Inc. v. American Transit Ins. Co., 15 Misc.3d 145(A), 2007 N.Y. Slip Op. 51176(U) (App. Term 2d & 11th Dists. June 8, 2007). The mere allegation by an insurer that an individual was injured in the course of employment does not suffice. The insurer must proffer competent evidence in admissible form of the alleged facts giving rise to its contention that Workers' Compensation benefits are available. Westchester Medical Center v. American Transit Ins. Co., 60 A.D.3d 848 (2d Dept. 2009). The trier of fact need only find that there exists an issue of fact and/or law as to whether the injury took place in the course of employment. The insurer does not bear the burden of proving that indeed the injured person was in the course of employment. See also OBB Acupuncture. PC v American Transit Insurance - Arbitrator Aaron Maslow - 17-16-1043-2893.

Here, the evidence was sufficient to raise a question of fact and/or law as to whether Assignor was in the course of his employment when the motor vehicle accident took place. Assignor was driving a for-hire vehicle with TC plates, with a livery policy, at the time of the accident. The respondent also submitted an affidavit from Michael Duignan in which he attests to the fact that at the time of the accident the Assignor was covered under a livery policy and was not the registered owner of the insured vehicle. This suffices to sustain Respondent's defense that Assignor may be eligible for Workers' Compensation benefits as he may have been in the course of employment when the accident transpired.

The Appellate Courts have held that the burden of proof is quite low in determining whether Worker's Compensation is primary. In Parkway Mgmt., PLLC v. American Transit Ins. Co., 39 Misc.3d 133 (App. Term 2d Dept. 2013) the court held: [w]e find that defendant's proof, including the

police accident report was sufficient to raise a question of fact as to whether plaintiff's assignor had been acting as an employee at the time of the accident, which issue must be resolved by the Workers' Compensation Board.". See also RX Warehouse Pharmacy, Inc. v. American Transit Ins. Co., Index No. 51265/13 (Civ. Ct. Kings County, Richard J. Montelione, J., Nov. 13, 2015). and OBB Acupuncture. PC v American Transit Insurance - Arbitrator Aaron Maslow - 17-16-1043-2893. "TC plates alone sufficient to require the Assignor to first determine if Workers Compensation benefits are available."

An insurer's contention that recovery of No-Fault benefits is barred pursuant to Workers' Compensation Law § 11 should not be entertained, but rather the claims must be referred to the Workers' Compensation Board for a determination as to whether the plaintiffs have a valid cause of action to recover No-Fault benefits or whether they are relegated to benefits under the Workers' Compensation Law, as said Board has primary jurisdiction to determine factual issues concerning coverage under the Workers' Compensation Law. LMK Psychological Services, P.C. v. American Transit Ins. Co., 64 A.D.3d 752, 882 N.Y.S.2d 719 (2d Dept. 2009).

Since the denial of claim was timely, Respondent was within its rights to pursue this defense at the hearing. Cf Westchester Medical Center v. Lincoln General Ins. Co., 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); General Ins. Co. A.B. Medical Services, PLLC v. American Transit Ins. Co., 24 Misc.3d 127(A), 889 N.Y.S.2d 881Services, PLLC v. American Transit Ins. Co. (Table), 2009 N.Y. Slip Op. 51263(U), 2009 WL 1774338 (App. Term 9th & 10th Dists. June 18, 2009); Inwood Hill Medical, P.C. v. Metropolitan Property and Casualty Ins. Co., 24 Misc.3d 127(A), 889 N.Y.S.2d 882 (Table), 2009 N.Y. Slip Op. 51264(U), 2009 WL 1774324 (App. Term 9th & 10th Dists. June 18, 2009).

Accordingly, the within arbitration claim is dismissed without prejudice so that it can be submitted to the Workers' Compensation Board for a determination as to whether benefits must be paid under the Workers' Compensation Law. Respondent's defense is sustained, and it overcomes Applicant's prima facie case of entitlement to No-Fault.

Regarding the NCEC - 101 Form

Applicant argues they have submitted a copy of the Workers' Compensation Board Decision and argues that there are no Workers' Comp Benefits

available to this Assignor. Applicant has submitted a copy of an NCEC-101 form from the Workers' Comp Board.

I find the NCEC-101 Workers' Compensation Board Decision is not sufficient to establish there are no Workers' Compensation Benefits. Missing is the WCB Case Number, Employer Information, Carrier ID Number, Carrier Case Number, or Insurance Carrier information listed in the decision. While the correct date of accident is listed at the bottom of the decision, I find the other missing information calls into question the veracity of the document. I also note Arbitrator Kate Cifarelli's award on the issue where the arbitrator found the NCEC-101 document insufficient to establish that the Assignor was ineligible for Workers' Compensation Benefits. See Eclipse Medical Imaging PC v. American Transit Insurance Company - 17-21-1193-9727. See also Brooklyn Medical Practice, PC v. American Transit Insurance Company - 17-20-1159-0238 ("The letter submitted here does not contain any such language, and thus is unconvincing evidence that the WCB made any dispositive finding regarding the status of the patient. Moreover, the NCEC-101 letter has a blank space for "WCB Case No." which appears to be further evidence that no hearing was held in this matter, to determine the eligibility for this claimant driver"). As such, the matter is dismissed without prejudice for the above referenced dates of service.

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	**06/18/18 - 06/18/18**	**$114.33**	**Awarded: $114.33**
	Brooklyn Medical Practice, PC	**06/19/18 - 06/27/18**	**$387.90**	**Awarded: $387.90**
	Brooklyn Medical Practice, PC	**07/03/18 - 07/31/18**	**$782.63**	**Awarded: $782.63**
	Brooklyn Medical Practice, PC	**08/01/18 - 08/30/18**	**$653.33**	**Awarded: $653.33**
	Brooklyn Medical Practice, PC	**09/05/18 - 09/17/18**	**$473.02**	**Awarded: $473.02**
	Brooklyn Medical Practice, PC	**10/01/18 - 10/31/18**	**$588.68**	**Awarded: $588.68**
	Brooklyn Medical Practice, PC	**11/07/18 - 11/30/18**	**$452.55**	**Dismissed without prejudice**
	Brooklyn Medical Practice, PC	**12/05/18 - 12/26/18**	**$524.03**	**Dismissed without prejudice**
	Brooklyn Medical Practice, PC	**01/06/19 - 01/30/19**	**$258.60**	**Dismissed without prejudice**
	Brooklyn Medical Practice, PC	**01/30/19 - 01/30/19**	**$535.86**	**Dismissed without prejudice**
	Brooklyn Medical Practice, PC	**02/07/19 - 02/21/19**	**$171.81**	**Dismissed without prejudice**
Total			**$4,942.74**	**Awarded: $2,999.89**

B. The insurer shall also compute and pay the applicant interest set forth below. 05/22/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the initiation date for this case until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d), subject to 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 Queens

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

10/02/2024
(Dated)

Thomas Eck

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:
5abbec0fa24c9f81be44521a0a0511d2

Electronically Signed

Your name: Thomas Eck
Signed on: 10/02/2024