

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. 17-24-1351-6067

Applicant's File No. AR24-24208

Insurer's Claim File No. 1084476-1

NAIC No. 16616

ARBITRATION AWARD

I, Ann Lorraine Russo, 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: patient

1. Hearing(s) held on 11/25/2024
Declared closed by the arbitrator on 11/25/2024

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

Adam Waknine from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,737.98**, 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 issue in dispute in this case is the nonpayment by the respondent for injection and medical services performed from 6/24/2020 through 12/6/2023 by the applicant for the forty-eight-year-old male patient for a motor vehicle accident on 5/29/2020. The respondent issued timely denials for the medical services based upon the independent medical examination of the patient with Dr. Francisco Santiago on 5/18/2021 effective 6/1/2021 and the peer review report by Dr. Richard Coven for the injection services.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the electronic case folder as of the date of the hearing and oral arguments of counsel for the respective parties. No witness testimony was presented at the hearing.

This case is a companion case with two other cases for the date of accident on 5/29/2020 for the same patient and a different patient and for the same applicant and a different applicant bearing American Arbitration Association case numbers 17 24 1355 6494 and 17 24 1351 6065.

The issue in dispute in this case is the nonpayment by the respondent for injection and medical services performed from 6/24/2020 through 12/6/2023 by the applicant for the forty-eight-year-old male patient for a motor vehicle accident on 5/29/2020. The respondent issued timely denials for the medical services based upon the independent medical examination of the patient with Dr. Francisco Santiago on 5/18/2021 effective 6/1/2021 and the peer review report by Dr. Richard Coven for the injection services. The respondent issued a timely partial denial for the bill for dates of services from 1/3/2021 through 1/31/2021 based upon the fee schedule. The applicant has not submitted any opposition to the respondent's fee schedule calculations and the balance of this bill is denied. The respondent issued a denial for date of service on 12/6/2023 in the amount of \$33.66 based upon the failure of the applicant to timely submit the bill within the statutory 45-day time frame (See 11 NYCRR Section 65-2.4) and the independent medical examination by Dr. Santiago. The applicant submitted proof of mailing dated 1/11/2024 and a blanket denial based upon the independent medical examination was issued dated 5/27/2021 to the patient and medical providers, including the applicant in this case. The applicant submitted late medical records and reports in this case. The respondent provided that the late documents violate this forum's "Rocket Docket" rule and that to preclude the applicant's late submissions. As noted, the documentation was submitted late and should be precluded pursuant to this forum's rocket docket procedures and process. The late submissions are prejudicial and violate this forum rocket docket processes and procedures. The late documents violate the rocket docket rules and procedures of the arbitration forum and the late documents are precluded in this case. It was further noted by that permitting the applicant to submit the late documentation would prejudice the respondent and would reward the applicant's tardy behavior. The amount in dispute is \$1,737.98 for the services in this case.

A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission to the defendant of a claim form, proof of the fact and the amount of the loss sustained, and proof either that the defendant had failed to pay or deny the claim within the requisite 30-day period, or that the defendant had issued a timely denial of claim that was conclusory, vague or without merit as a matter of law. See Insurance Law Section 5106(a); *Ave T MPC Corp. v. Auto One Ins. Co.*, 32 Misc.3d 128(A), 934 N.Y.S.2d 32 (Table), 2011 N.Y. Slip Op. 51292(U), 2011 WL 2712964 (App. Term 2d, 11th & 13th Dists. July 5, 2011); *Westchester Medical Center v. Nationwide Mut. Ins. Co.*, 78 AD3d 1168, 911 N.Y.S.2d 907 (2nd Dept. 2010) and *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 31 AD3d 512 (2006). In the case at hand, the respondent issued a timely denial based upon the independent medical

examination and peer review reports challenging the medical necessity of the injection and medical services in dispute. The denial is timely and promptly apprise(s) the claimant with a high degree of specificity of the ground or grounds on which the disclaimers are predicated in this case. As a result, the respondent has timely denied the applicant's claims thereby preserving its defense based upon the medical necessity of the medical and injection services.

The peer review report by Dr. Richard Coven is not persuasive, pertaining to the medical necessity for the injection services provided to the patient's lumbar spine in this case. The peer review does not sufficiently address the patient's injury to the lumbar spine and injection services performed in this case. The peer reviewer does not sufficiently incorporate the patient's mechanism of injury as a result of the motor vehicle accident on 5/29/2020, status, condition and course of medical treatment including the injection services. It was noted that the patient did sustain a prior lumbar spine injury from a prior slip and fall incident and that the patient was treated at that time. However, this pertinent information is not sufficiently discussed in the peer review report. The peer reviewer does not address or incorporate these pertinent clinical findings in the peer review report. The peer reviewer does not implement or discuss the pertinent medical information contained in the medical records that provide the patient's medical history, mechanism of the motor vehicle accident on 5/29/2020 and course of medical treatment for the patient's injuries as a result of the motor vehicle accident involved in a collision with another motor vehicle and the patient's condition and status. In addition, the peer review report contains contrary and inconsistent information pertaining to the mechanism of the patient's lumbar spine. The peer review report contains inconsistent and contrary information and analysis for the patient in this case. The peer reviewer does not adequately discuss the medical documentation and results of the course of medical treatment upon the patient's status in support of the peer review report. The patient's treating medical providers, physicians and patients provided the course of conservative treatment and concluded that the injection services were warranted in this case. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the medical records and reports in this case. The peer reviewer does not sufficiently address or incorporate the total and complete findings contained in the medical reports and reports. The medical reports and documentation contain sufficient information in response to the concerns provided in the peer review report. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the medical records in this case. The peer review report is not persuasive in this case.

The independent medical examination report by Dr. Franciso Santiago performed on 5/18/2021 effective 6/1/2021 is persuasive in this case. The independent medical examination report by Dr. Santiago provided an essentially normal examination of the patient on 5/18/2021. The applicant has not submitted any sufficient and persuasive prior and contemporaneous medical reports and records in opposition to the events and findings contained in the independent medical examination by Dr. Santiago. There are lapses of medical treatment records, reports and session notes from the date of the accident and throughout the course of medical treatment for the patient in this case. The applicant has not submitted sufficient and consistent medical records and reports to establish a continued course of medical treatment for the patient as a result of this

accident in this case. The applicant has not submitted any persuasive medical reports or records in support of the continuation of medical treatment subsequent to the independent medical examination by Dr. Santiago in this case. The applicant's medical records do not provide any additional significant information in support of the continuation of the medical services in this case. The applicant's medical documentation does not contain any further additional information in support of the performance of the medical services in this case. The applicant has not submitted sufficient medical documentation in support of the medical services provided to the patient subsequent to the respondent's independent medical examination in this case. The applicant's medical documents do not provide sufficient supporting medical information, findings and events in opposition to the findings provided in the independent medical examination report in this case. The applicant's medical records do not provide any additional significant information in support of the continuation of the medical services in this case. The applicant's medical documentation does not contain any further additional information in support of the performance of the medical services in this case. The applicant has not submitted sufficient medical documentation in support of the medical services provided to the patient subsequent to the respondent's independent medical examination in this case. The applicant's medical documents do not provide sufficient supporting medical information, findings and events in opposition to the findings provided in the independent medical examination report in this case. Consequently, the medical services performed subsequent to the respondent's independent medical examination of the patient by Dr. Santiago are denied. The independent medical examination report by Dr. Santiago is persuasive for the denial for the medical services in this case. Consequently, the denials for the medical services provided by the applicant for the patient subsequent to the respondent's independent medical examination by Dr. Santiago are sustained.

The independent medical examination report provided essentially normal examination of the patient on 5/18/2021. The independent medical examination report of the patient with Dr. Santiago provided consistent clinical findings and events in support of the termination of the medical services in this case. The applicant has not timely submitted any sufficient and persuasive and contemporaneous medical reports and records in opposition to the events and findings contained in the independent medical examination by Dr. Santiago in this case. There are lapses of medical treatment records and physical examination reports from the date of the accident and throughout the course of medical treatment for the patient in this case. The applicant has not timely submitted sufficient and consistent medical records and reports to establish a continued course of medical treatment for the patient as a result of this accident in this case. The applicant has not timely submitted any persuasive medical reports or records in support of the continuation of medical treatment after the independent medical examination by Dr. Santiago. The applicant's medical records do not provide any additional significant information in support of the continuation of the medical services in this case. The applicant's medical documentation does not contain any further additional information in support of the performance of the medical services after the independent medical examination of the patient with Dr. Santiago in this case. The applicant has not timely submitted sufficient medical documentation in support of the medical services provided to the patient after the respondent's independent medical examination in this case.

Based upon the evidence presented in this case, it is the opinion of this Arbitrator that the applicant has established that a portion of the services were medically necessary but has not established that the services performed after the independent medical examination were medically necessary or that the respondent did not pay the appropriate fee schedule amount for a portion of the services in this case.

Accordingly, the applicant's claim is partially granted.

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	06/24/20 - 06/24/20	\$762.53	Awarded: \$762.53
	Brooklyn Medical Practice, PC	07/15/20 - 07/15/20	\$343.56	Awarded: \$343.56
	Brooklyn Medical Practice, PC	01/03/21 - 01/31/21	\$302.76	Denied
	Brooklyn Medical Practice, PC	09/05/23 - 09/26/23	\$194.57	Denied
	Brooklyn Medical Practice, PC	10/02/23 - 10/02/23	\$33.64	Denied
	Brooklyn Medical Practice, PC	11/19/23 - 11/26/23	\$67.28	Denied
	Brooklyn Medical Practice, PC	12/06/23 - 12/06/23	\$33.64	Denied
Total			\$1,737.98	Awarded: \$1,106.09

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/11/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay the applicant interest from the date of the arbitration filing on 6/11/2024.

C. Attorney's Fees

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

The respondent shall pay the applicant attorney fees pursuant to 11 NYCRR Section 65-4.6.

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

11/26/2024
(Dated)

Ann Lorraine Russo

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:
76f28b8813f16769bfb49de7900f74db

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 11/26/2024