

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. 17-24-1351-6065

Applicant's File No. AR24-24205

Insurer's Claim File No. 1084476-02

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, **\$3,787.34**, 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 medical services from 6/1/2020 through 1/31/2021 for the fifty-four-year-old male patient for a motor vehicle accident on 5/29/2020 in this case. The respondent submitted the entire defense package late in this case.

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 6067.

The issue in dispute in this case is the nonpayment by the respondent for medical services from 6/1/2020 through 1/31/2021 for the fifty-four-year-old male patient for a motor vehicle accident on 5/29/2020 in this case. The respondent submitted the entire defense package late in this case. The respondent simply submitted the respondent's entire defense documentation and evidence late in this case. As further noted by the applicant's attorney, the respondent's documentation was clearly in the respondent's care custody and control. Applicant's counsel provided that to accept the documentation late in this case is a violation of this forum's rocket docket rules and procedures. Clearly, the respondent has not submitted timely defense documentation in support of any defense in this case. The late submissions violate the rocket docket rules and procedures of the arbitration forum and late documentation is precluded in this case. The submission of late documentation by respondent is prejudicial to the applicant and would reward the respondent's tardy behavior. The late submission of the respondent's defense documentation renders the respondent's position defective in this case. The respondent has not timely submitted the entire defense documentation package in this case. The respondent's position is late and defective. In addition, the applicant noted prior decisions in favor of other medical providers and patients based upon the respondent's denial based upon lack of causation and the biomechanical report. The applicant provided collateral estoppel applies in this case. The respondent provided that this case is for a different applicant and services. However, the respondent's entire defense package is late in this case. The amount in dispute is \$3,787.34 for the services in this case.

As provided by applicant the respondent's late submission is prejudicial to the applicant and violates this forum rocket docket processes and procedures. The late documents violate the rocket docket rules and procedures of the arbitration forum and the late documentation, which includes the denials and supporting defense documentation is precluded in this case. The submission of the late pertinent defense documents is prejudicial to the applicant and would reward the respondents' tardy behavior. It was noted that the respondent did request and was granted additional time from the American Arbitration Association to submit respondent's defense documentation in this case. The respondent did not submit the respondent's defense documentation on the initial or extended date for the documentation in this case. The respondent simply ignored this forum's rocket docket rules and procedures and submitted the defense documents late in this case.

The applicant's attorney moved pursuant to this forum's "Rocket Docket" rule to preclude the respondent's late defense and supporting documentation submission. The respondent provided the package was solely three days late and the applicant was aware

of the respondent's position for the services in this case. The applicant's counsel provided that the documentation was late in this case. The applicant provided that the respondent requested additional time to submit the documentation from the American Arbitration Association which was granted and the respondent still failed to timely submit the respondent's defense package in this case. The applicants' arguments are persuasive in this case and the respondent's late submission was precluded in this case. It is noted that this arbitration was filed by the applicant with the American Arbitration Association on 6/11/2024. The American Arbitration Association forwarded a letter advising the respondent that this case was commenced by the applicant and that the respondent time frame to submit its documentation and defense documents terminated by 7/22/2024. The respondent requested additional time to provide a submission from the American Arbitration Association, which was granted until 8/21/2024 in this case. The respondent did not submit the respondent's defense documentation until 8/23/2024 to the American Arbitration Association in this case. The respondent submitted the defense and supporting documentation on 8/23/2024 which is clearly after the due date on 7/22/2024 and the extended due date on 8/21/2023 and late in this case. The respondent's defense documentation is incomplete, late and clearly in violation of this forum's rocket docket rules and procedures in this case. Applicant's counsel noted that the American Arbitration Association is the administrator of the arbitration cases and records the submissions received by the parties to the cases and that the respondent's submissions in this case are incomplete and late.

Applicant's counsel noted the submission was provided late to the American Arbitration Association and therefore late to the applicant as noted in the e-center file. The first Amendment to Regulation 68-D (11 NYCRR § 65-4), commonly referred to as "the Rocket Docket", provides, in pertinent part, that within thirty (30) calendar days after the American Arbitration Association advises a respondent of its receipt of a request for arbitration, the respondent shall "provide all documents supporting its position on the disputed matter", or may request in writing for an additional 30 calendar days to respond". 11 NYCRR § 65-4.2 (3) (ii). "The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission". 11 NYCRR § 65-4.2 (3) (iii). After the written record is closed, any additional written submission can be made "only at the request of or with the approval of the arbitrator". Id. According to letters from AAA to the insurer, Respondent was informed that its submission was due by 7/22/2024. Respondent did request additional time to provide the respondent's submission from the American Arbitration Association, which was granted for one month until 8/21/2024. The respondent's defense package was submitted late on 8/23/2024. In addition, as noted by applicant's counsel the documentation that is within respondent's care, custody and control and is necessary and pertinent documentation needed to support the respondent's position in this case for which respondent is clearly aware and has chosen to defend in this case. Given that no persuasive reason was given to excuse the insurer's failure to adhere to "the Rocket Docket" rules, or its failure to comply with timely due process by serving the opposing party with a copy of its evidence, the respondent's late documentation submission was precluded 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). The respondent did not timely submit the defense and supporting documentation in support of its defenses in this case. The respondent's late submission of the respondent's own defense and supporting documentation is prejudicial to the applicant and in violation of this forum's rocket docket procedures. The respondent has not timely submitted its pertinent and necessary defense documentation in support of any defense. The respondent simply submitted the defense documentation late in this case.

Based upon the evidence presented in this case, it is the opinion of this Arbitrator that the applicant has established that the services were warranted in this case.

Accordingly, the applicant's claim is granted in this case.

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	06/01/20 - 06/01/20	\$114.33	Awarded: \$114.33
	Brooklyn Medical Practice, PC	06/02/20 - 06/30/20	\$969.75	Awarded: \$969.75
	Brooklyn Medical Practice, PC	08/02/20 - 08/18/20	\$449.01	Awarded: \$449.01
	Brooklyn Medical Practice, PC	09/23/20 - 09/30/20	\$284.03	Awarded: \$284.03
	Brooklyn Medical Practice, PC	10/01/20 - 10/27/20	\$437.32	Awarded: \$437.32
	Brooklyn Medical Practice, PC	11/03/20 - 11/25/20	\$497.33	Awarded: \$497.33
	Brooklyn Medical Practice, PC	12/01/20 - 12/31/20	\$598.25	Awarded: \$598.25
	Brooklyn Medical Practice, PC	01/03/21 - 01/31/21	\$437.32	Awarded: \$437.32
Total			\$3,787.34	Awarded: \$3,787.34

- 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:
acb623b70be4f69b7a09c7a6040fe7ec

Electronically Signed

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