

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. 17-24-1355-6502

Applicant's File No. AR24-24765

Insurer's Claim File No. 1116718-01

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 12/06/2024  
Declared closed by the arbitrator on 12/06/2024

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

Jeffrey Siegel from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,491.99**, 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

Was the physical therapy provided to the EIP from August 3, 2023 through April 14, 2024 medically unnecessary based upon the IMEs conducted by Dr. Douglas Unis on November 18, 2022 and a founded belief that the injuries asserted by the EIP were not causally related to the motor vehicle accident and were the claims timely presented to the respondent? The 40-year-old male EIP was involved in a motor vehicle accident on July 27, 2022 and received treatment for injuries sustained the accident including injury to the cervical and lumbar spine, right shoulder, right knee.

#### 4. Findings, Conclusions, and Basis Therefor

At issue is whether the physical therapy provided to the EIP from August 3, 2023 through April 14, 2024 was medically unnecessary and whether the claims were timely presented to the respondent.

The basis of the respondent's timely denials is the IME conducted on November 18, 2022 by Dr. Douglas Unis and the assertion that the respondent demonstrated a founded belief that the EIP's condition was not causally related to the motor vehicle accident of July 27, 2022.

I have reviewed the documents contained in the electronic case folder as of December 6, 2024. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on December 6, 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, a bicyclist, was involved in a motor vehicle accident on July 27, 2022. The EIP was treated at the emergency room of New York Presbyterian Hospital on the day of the accident. The EIP presented to North Shore Family Chiropractic on August 2, 2022 with complaints of pain in the neck and low back. The examination reported reduced range of motion of the cervical and lumbar spine with positive orthopedic testing for the cervical and lumbar spine. The EIP presented to Brooklyn Medical Practice on August 3, 2022 with complaints of pain in the neck, mid back, low back, left hand, right shoulder, right hip and both knees. The examination reported reduced range of motion of the cervical and lumbar spine, reduced range of motion of the right shoulder with tenderness and reduced range of motion of the knees bilaterally. The EIP presented to Unicorn Acupuncture on August 4, 2022 with complaints of pain in the neck, low back, right shoulder, both ankles and both knees and the fourth digit on the left hand. The examination reported reduced range of motion of the cervical and lumbar spine plus positive acupuncture findings. The EIP was placed on a course of conservative treatment. The EIP underwent an MRI of the right shoulder on August 3, 2022 which reported a separation of the AC joint, fluid, contusion and likely bone bruise, tear of the supraspinatus tendon and likely tear of the superior labrum. The EIP presented to Brooklyn Medical Practice on August 17, 2022 with complaints of pain in the neck, mid back, low back, left hand, right shoulder, right hip and both knees. The examination reported reduced range of motion of the cervical and lumbar spine, reduced range of motion of the right shoulder with tenderness and reduced range of motion of the knees bilaterally. The EIP underwent an MRI of the left ankle on August 22, 2022 which reported a tear of the talofibular ligament. The EIP underwent surgery to the right shoulder on September 1, 2022 which reported a postoperative diagnosis of

impingement syndrome, rotator cuff tear, SLAP tear and internal derangement. The EIP underwent an MRI of the right knee on October 4, 2022 which reported tears of the ACL and lateral meniscus and bone bruising. The EIP presented to have Brooklyn Medical Practice on November 3, 2022 with complaints of pain in the neck and low back. The examination reported reduced range of motion of the cervical and lumbar spine.

Dr. Johnson conducted the chiropractic and acupuncture IME on November 18, 2022, at which time the EIP complained of pain in both hands and feet, the right knee and the right shoulder. 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 with negative orthopedic testing for the bilateral shoulders, elbows, wrists, hips, knees, and ankles and negative acupuncture findings. The conclusion was that the EIP needed no further chiropractic or acupuncture treatment.

Dr. Unis conducted the orthopedic IME on November 18, 2022, at which time the EIP complained of pain in both hands and feet, the right knee and the right shoulder. 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 with negative orthopedic testing for the bilateral shoulders, elbows, wrists, hips, knees, and ankles and negative acupuncture findings. The conclusion was that the EIP needed no further orthopedic treatment or physical therapy.

Orthopedic no-fault benefits were terminated effective December 11, 2022.

The EIP presented to Unicorn Acupuncture on December 1, 2022 with complaints of pain in the neck and right shoulder. The examination reported reduced range of motion of the cervical spine and right shoulder and positive acupuncture findings. The EIP presented to North Shore Family Chiropractic on December 11, 2022 with complaints of pain in the neck and low back. The examination reported reduced range of motion of the cervical and lumbar spine with positive orthopedic testing for the cervical and lumbar spine. The EIP underwent an MRI of the cervical spine on December 16, 2022 which reported disc herniations from C5 through C7. The EIP presented to Unicorn Acupuncture on January 5, 2023 with complaints of pain in the neck and right shoulder. The examination reported reduced range of motion of the cervical spine and right shoulder and positive acupuncture findings. The EIP underwent electrodiagnostic testing of the upper extremities on January 13, 2023 which reported evidence of C6 radiculopathy. The EIP presented to North Shore Family Chiropractic on February 22, 2023 complaints of pain in the neck and low back. The examination reported reduced range of motion of the cervical and lumbar spine with positive orthopedic testing for the cervical and lumbar spine. The EIP presented to Unicorn Acupuncture on March 3, 2023 with complaints of pain in the neck and right shoulder. The examination reported reduced range of motion of the cervical spine and right shoulder and positive acupuncture findings. The EIP presented to North Shore Family Chiropractic on April 4, 2023 complaints of pain in the neck and low back. The examination reported reduced range of motion of the cervical and lumbar spine with positive orthopedic testing for the cervical and lumbar spine. The EIP presented to Unicorn Acupuncture on May 1, 2023

with complaints of pain in the neck and right shoulder. The examination reported reduced range of motion of the cervical spine and right shoulder and positive acupuncture findings.

This arbitration concerns nine bills for services rendered to the EIP from October 5, 2023 through April 14, 2024. Three of the claims were denied based upon the 12 unit rule for the maximum number of reimbursable modalities for a given date of treatment, three bills were denied solely based upon the founded belief argument, two of the bills were denied solely based upon the IME by Dr. Unis, and two bills were denied based upon the founded belief argument and the IME conducted by Dr. Unis. Additionally, the respondent asserts nonreceipt of three of the claims.

With respect to the defense based upon the 12 unit, the respondent submitted no proof of prior medical payments to another medical provider that would reduce the reimbursable modalities of the applicant's claims. The applicant's claims in of themselves do not exceed the fee schedule. Accordingly, applicant's defense based upon the 12 unit rule is without evidence or merit.

The EIP underwent an examination under oath on June 28, 2023. The EIP stated that he was a bicyclist which was struck by a motor vehicle causing the EIP to fall to the ground. He states that the impact was heavy and the EIP fell on his right side. He states that he was taken to the emergency room and received stitches to his head. He states that he injured his neck, low back, right shoulder, left hand and both knees as a consequence of the accident. He testified that he had not had a prior injury to the neck, low back, right shoulder, left hand or knees.

I find the defense based upon a founded belief that the accident was not the precipitating cause of the EIP's treatment to be without merit. The EIP testified that he was taken to the emergency room following being knocked off his bicycle by a motor vehicle and suffered injuries to his head, right shoulder, left hand, both knees and the low back. The EIP testified that he had not had prior injury to these parts of his body. The MRI noted a contusion and bone bruise, which would seem to be evidence of recent trauma. The EIP testified that he fell off the bike onto his right side as result of the motor vehicle accident. I see nothing in the examination under oath testimony that provides any evidence that the EIP was not injured in the motor vehicle accident and in particular, injury to the cervical and lumbar spine, right shoulder, right knee and left hand.

I find the respondent has not demonstrated by sufficient factual basis and medical rationale that the treatment subsequent to the IME cutoff was medically unnecessary. I find the reports of Unicorn Acupuncture, North Shore Family Chiropractic, and Brooklyn Medical Practice both prior to and subsequent to her the IME cut off to be credible, sufficiently detailed and documenting objective findings for the cervical and lumbar spine. The EIP underwent an MRI of the cervical spine always following the IME which reported disc herniations at C5 through C7. The EIP underwent electrodiagnostic testing on January 13, 2023 which reported evidence of cervical radiculopathy. Based upon the totality of the credible evidence, I find the applicant has demonstrated that the treatment subsequent to the IME cutoff was medically necessary.

With respect to the claims for treatment rendered to the EIP from August 3, 2023 through August 31, 2023, October 5, 2023 through October 26, 2023, and November 2, 2023 through November 30, 2023, the respondent asserts nonreceipt of the claims.

The applicant submitted a post office cancellation which reflects that on September 11, 2023, a claim was sent to the respondent for dates of treatment August 3, 2023 through August 31, 2023 which reflects the dates of service, the amount of the claim, and the EIP's name.

The applicant submitted a post office cancellation which reflects that on November 9, 2023, a claim was sent to the respondent for dates of treatment October 5, 2023 through October 26, 2023 which reflects the dates of service, the amount of the claim, and the EIP's name.

The applicant submitted a post office cancellation which reflects that on December 12, 2023, a claim was sent to the respondent for dates of treatment November 2, 2023 through November 30, 2023 which reflects the dates of service, the amount of the claim, and the EIP's name.

I am satisfied by the proof submitted that the applicant timely presented claim to the respondent for the August 3, 2023 through August 31, 2023, October 5, 2023 through October 26, 2023 and November 2, 2023 through November 30, 2023 dates of service

Accordingly, applicant's claims are granted in their entirety.

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	08/03/23 - 08/31/23	\$201.84	Awarded: \$201.84
	Brooklyn Medical Practice, PC	09/07/23 - 09/28/23	\$261.85	Awarded: \$261.85
	Brooklyn Medical Practice, PC	10/05/23 - 10/26/23	\$134.56	Awarded: \$134.56
	Brooklyn Medical Practice, PC	11/02/23 - 11/30/23	\$134.56	Awarded: \$134.56
	Brooklyn Medical Practice, PC	12/07/23 - 12/28/23	\$261.85	Awarded: \$261.85
	Brooklyn Medical Practice, PC	01/03/24 - 01/25/24	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	02/02/24 - 02/23/24	\$134.56	Awarded: \$134.56
	Brooklyn Medical Practice, PC	03/03/24 - 03/28/24	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	04/11/24 - 04/14/24	\$160.93	Awarded: \$160.93
<b>Total</b>			<b>\$1,491.99</b>	<b>Awarded: \$1,491.99</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 07/10/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded commencing with the filing of the AR1 at a rate of 2% per month, simple, and 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.

12/06/2024  
(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:**  
d31bc040195c70dddee4312034a4aa6e

**Electronically Signed**

Your name: Lester Hill  
Signed on: 12/06/2024