

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. 17-24-1354-9116

Applicant's File No. AR24-24751

Insurer's Claim File No. 1090080

NAIC No. 16616

ARBITRATION AWARD

I, Giovanna Tuttolomondo, 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 12/30/2024
Declared closed by the arbitrator on 12/30/2024

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

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

2. The amount claimed in the Arbitration Request, **\$916.79**, 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 Assignor, JMML, now a 33-year-old female, was the driver of a motor vehicle involved in an accident on October 29, 2020. Thereafter, the Assignor sought attention for the injuries sustained in the accident. At issue in this case are claims totaling \$ 916.79, representing an examination, follow-up examinations and physical therapy between October 30, 2020 and December 12, 2022. Respondent denied the claims based on a coverage defense. The issue presented is whether Respondent validates this defense.

4. Findings, Conclusions, and Basis Therefor

The decision in this case is based upon the oral arguments of the parties' representatives at the video/Zoom hearing and upon my review of the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association. I have reviewed the documents in MODRIA as of the date of closing of this file and incorporate, and rely upon, said documents in making my decision.

At the outset, I note that the defense based on Workers' Compensation is withdrawn per the NF-10s.

Collateral Estoppel

In an associated matter filed under AAA Case Number 17-22-1267-5046, involving the same Respondent and defense, my colleague, Arbitrator Stacey Charkey, determined in pertinent part:

"Respondent has not submitted a scintilla of evidence in support of its fraud allegation. Respondent does not even submit a brief outlining the facts or what led respondent to opine that this was not a "covered event". For the purposes of this forum and of the controversy presented in this arbitration, I find that Respondent has not proved fraud herein. Based upon the submissions provided for my review, respondent has failed to establish that the injuries are unrelated to a covered event. Moreover, I am constrained to find that the respondent's submissions are deficient to establish that it properly tolled the claim. In this regard, applicant would have been within its rights to pursue arbitration any time after the issuance of the original denial on 10/5/21. Respondent wholly fails to explain what transpired between the date of the denials, to wit: 4/24/2021 and the date of the rescission of the WC defense on 8/10/2022. There is not a scintilla of evidence that the claim was submitted to WCB. Respondent does not indicate, what information was received to compel them to rescind the denial. Some explanation was required in order for respondent to rely on the verification requests and EUO scheduling letters that were issued following respondent's denials of applicant's claims to attempt to toll the claim. None was provided. I do not disagree with respondent's claim that a coverage defense can be raised at anytime, however, respondent cannot be permitted to deny a claim based on a wholly unsupported basis in the hopes that they can later pursue a more fulsome investigation after the denial has been issued. The issuance of a denial is not a mechanism for delay. The act of issuing a denial does not extend the respondent's time to pay or further deny a claim. It is not a verification vehicle and should not be utilized for the purpose of the claim. Had respondent verily required further information, there are tolling procedures that can and should be employed. The time to seek such verification was prior to the issuance of the denial. As such, the claim is granted."

The determination in 17-22-1267-5046 serves as collateral estoppel and bars recovery herein. Collateral estoppel, or issue preclusion, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. Wisell v. Indo-Med Commodities, Inc., 74 A.D.3d 1059, 903 N.Y.S.2d 116 (2nd Dept., 2010) [internal citations omitted] [emphasis added].

I adopt Arbitrator Charkey's assessment. I note also that having reviewed the Record before me, there is no insight provided as to a coverage or fraud defense. The Examination Under Oath ["EUO"] transcript does not validate any such defense. Nor is there an Affidavit of one with knowledge explaining the relevance of the EUO transcript. Further, there is no evidence to support a defense based on a lack of causality. I award the claims.

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 | 10/30/20 - 10/30/20 | \$149.78 | Awarded: \$149.78 |
| | | | | |

| | | | | |
|--------------|--|--------------------------------|-----------------|------------------------------|
| | Brooklyn Medical Practice, PC | 11/03/20 - 11/20/20 | \$216.94 | Awarded: \$216.94 |
| | Brooklyn Medical Practice, PC | 12/03/20 - 12/23/20 | \$355.50 | Awarded: \$355.50 |
| | Brooklyn Medical Practice, PC | 01/04/21 - 01/11/21 | \$67.28 | Awarded: \$67.28 |
| | Brooklyn Medical Practice, PC | 02/17/21 - 02/17/21 | \$33.64 | Awarded: \$33.64 |
| | Brooklyn Medical Practice, PC | 12/12/22 - 12/12/22 | \$93.65 | Awarded: \$93.65 |
| Total | | | \$916.79 | Awarded: \$916.79 |

B. The insurer shall also compute and pay the applicant interest set forth below. 07/03/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See, generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217, 906 N.E.2d 1046 (2009).

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11

NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d)." This amendment takes into account that the maximum attorney fee has been raised from \$850.00 to \$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, Giovanna Tuttolomondo, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

12/30/2024
(Dated)

Giovanna Tuttolomondo

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:
5480a0136320ff83104f5677d0838ab1

Electronically Signed

Your name: Giovanna Tuttolomondo
Signed on: 12/30/2024