

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. 17-24-1355-6491

Applicant's File No. AR24-24860

Insurer's Claim File No. 1093873

NAIC No. 16616

ARBITRATION AWARD

I, Camille Nieves, 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: Eligible Injured Person (OF)

1. Hearing(s) held on 01/15/2025
Declared closed by the arbitrator on 01/15/2025

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, **\$1,451.08**, 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

Applicant seeks reimbursement for therapeutic treatments from 1/4/22 to 8/14/23 following a motor vehicle accident on 2/6/21. The charges were timely denied based on Workers' Compensation, an IME by Anna Krol, MD on 12/21/22, effective 1/17/23 and the fee schedule.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for therapeutic treatments from 1/4/22 to 8/14/23 following a motor vehicle accident on 2/6/21. The charges were timely denied based on Workers' Compensation, an IME by Anna Krol, MD on 12/21/22, effective 1/17/23 and the fee schedule.

In cases 17-22-1258-2886 and 17-20-1175-5749, another Arbitrator reviewed the same evidence and determined the absence of an NF2 and the presence of only one person in the EIP's vehicle did not support an issue of fact regarding Workers' Compensation as a defense such that the cases should be referred to the Workers' Compensation Board.

I find the matter is subject to the doctrine of issue preclusion based on collateral estoppel as I did in 17-24-1351-6054 and 17-24-1351-6058.

The defense of Workers' Compensation is not sustained.

The bills for 3/1/22 to 3/27/22 and 8/1/22 to 8/25/22 were also denied based on failure to submit the bills within 45 days. The first bill was received on 4/19/22 and the second bill was received on 9/19/22.

The 3/1/22 bill was mailed on 4/11/22 which is less than 45 days.

The 8/1/22 bill was mailed on 9/12/22 which is less than 45 days.

The defense cannot be sustained.

The IME examiner notes the EIP, 1 34 year old male, did not go to an ER and complained of continued neck, left shoulder and knee pain. Gait was normal. The acupuncture exam findings were normal. Qi and blood stagnation were normal. Ranges of motion of the cervical, thoracic and lumbar spine were normal and orthopedic and neurologic testing was negative. Two surgical portal scars were noted in the left shoulder and knee. The shoulder and knee exam was normal in all respects - ranges of motion and negative orthopedic and neurologic testing.

Sprains and strains of the cervical spine and contusions of the shoulder and knee which were status post surgery were deemed resolved and there was no further need for treatment.

The examiner did not review the operative reports for left shoulder surgery performed on 3/18/21 and left knee surgery performed on 8/26/21 and found contusions to be resolved.

There clearly were more serious injuries than contusions given the MRI findings which reported tears and the operative reports which noted more than contusions.

The IME was conducted more than a year later on 12/21/22 but there are contemporaneous and subsequent records noting positive objective findings warranting further therapy.

I find the IME to be insufficient to establish resolved injuries and that further treatment was unnecessary and the records sufficient to establish unresolved injuries and that further treatment was necessary.

The charges are awarded.

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
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	Brooklyn Medical Practice, PC	01/04/22 - 01/30/22	\$269.12	Awarded: \$269.12
	Brooklyn Medical Practice, PC	02/07/22 - 02/22/22	\$228.21	Awarded: \$228.21
	Brooklyn Medical Practice, PC	03/01/22 - 03/27/22	\$201.84	Awarded: \$201.84
	Brooklyn Medical Practice, PC	04/07/22 - 04/18/22	\$194.57	Awarded: \$194.57
	Brooklyn Medical Practice, PC	08/01/22 - 08/25/22	\$160.93	Awarded: \$160.93
	Brooklyn Medical Practice, PC	09/08/22 - 09/28/22	\$67.28	Awarded: \$67.28
	Brooklyn Medical Practice, PC	10/17/22 - 10/17/22	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	01/20/23 - 01/20/23	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	03/08/23 - 03/26/23	\$160.93	Awarded: \$160.93
	Brooklyn Medical Practice, PC	05/23/23 - 05/23/23	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	07/24/23 - 07/24/23	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	08/14/23 - 08/14/23	\$33.64	Awarded: \$33.64

Total	\$1,451.08	Awarded: \$1,451.08
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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 shall be computed from the date of filing at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

Pursuant to 11 NYCRR 65-4.6, 20% of the amount of first party benefits, plus interest thereon, subject 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 FL

SS :

County of Seminole

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

01/18/2025

(Dated)

Camille Nieves

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:
75e5411c778292b2ecc8d86e87bb79f8

Electronically Signed

Your name: Camille Nieves
Signed on: 01/18/2025