

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Michael Banay Physical Therapy P.C.
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1308-1633

Applicant's File No. DK23-381915

Insurer's Claim File No. 1109546-04

NAIC No. 16616

ARBITRATION AWARD

I, Anne Malone, 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 12/23/2024
Declared closed by the arbitrator on 12/23/2024

Artur Finkel, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,518.40**, 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 27 year old EIP reported involvement in a motor vehicle accident on February 12, 2022; claimed related injury and underwent office visits and physical therapy treatment provided by the applicant from February 16, 2022 to January 2, 2023.

The applicant also billed \$24.00 on each date of service for PPE supplies/services.

The applicant submitted claim for these medical services, payment of all bills except for dates of service 3/4/22 to 4/5/22; 6/2/22 to 6/17/22 and 8/2/22 was

denied on the grounds that EIP's injuries did not arise from the use and operation of the vehicle insured by the respondent.

For dates of service 3/4/22 to 4/5/22; 6/2/22 to 6/17/22 and 6/2/22 the respondent contends that these bills were either not received or were received more than 45 days after the dates of service.

The issues to be determined at the hearing are:

Whether the assignor's injuries arose out of the use or operation of a motor vehicle.

Whether the applicant established its *prima facie* entitlement to no fault benefits for the bills for dates of service 3/4/22 to 4/5/22, 6/2/22 to 6/17/22 and 8/2/22.

Whether the respondent established its fee schedule defense for all dates of service including its contention that the charges of PPE supplies/services on all dates of service were not reimbursable.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Coverage and lack of causal relationship

This claim was denied by the respondent who "is asserting a lack of coverage, as it has established the "fact or founded belief" based on the biomechanical report of Anthony Bellezza, PhD. dated 11/09/22 and the Examination Under Oath of the EIP which does not provide a rationale to support this denial.

It is the respondent's contention that the claimant's treated condition was unrelated to the motor vehicle accident and entire claim is denied based upon the founded belief the alleged injuries did not arise out of an insured event and/or are not casually related to a covered accident.

The applicant submitted the assignor's assignment of benefits form in which the assignor states, under warning of the penalties of filing a false report with an insurance company, that she was injured as a result of a motor vehicle accident that occurred on February 12, 2022 and thereby assigns his rights to benefits to the applicant.

Dr. Bellezza concluded that "the loads and mechanisms required to cause acute traumatic injuries to Mr. Davy's neck, back or right shoulder, right elbow, or right knee, with the **possible exception of a minor cervical paravertebral muscle strain or sprain** or a small contusion to his right knee would not have been present in the incident on February 12, 2022." (Emphasis added)

The report by Dr. Bellezza actually supports a causal relationship between the subject accident and some injuries sustained by the EIP.

Therefore, the respondent failed to establish its causation defense and denial based on a lack of coverage.

Applicant's *prima facie* entitlement to no-fault benefits for dates of service 3/4/22 to 4/5/22, 6/2/22 to 6/17/22 and 8/2/22

It is well settled that an applicant establishes its *prima facie* showing of entitlement to no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

In this matter, the applicant submitted proof of timely mailing of the bills for dates of service 3/4/22 to 4/5/22, 6/2/22 to 6/17/22 and 8/2/22.

Based on the foregoing, the applicant has established its *prima facie* entitlement to no-fault benefits for these dates of service.

Therefore, an award will be issued in favor of the applicant pursuant to the applicable fee schedule.

Fee schedule

Billing for PPE for all dates of service

The applicant billed a total of \$1,032.00 under CPT code 99072 for PPE supplies and services provided on each date of service. The respondent denied payment for the PPE on the grounds that: "[t]his procedure was performed for a condition not related to the motor vehicle accident." The respondent asserts that these supplies are not reimbursable. The applicant contends that these supplies were necessary to treat the EIP due to the COVID-19 pandemic and are therefore reimbursable as billed.

According to the OGC opinion letter dated January 1, 2007 regarding No Fault Health Service Reimbursement, only qualifying professional health services licensed under New York Law and provided to the claimant in the treatment of his/her injuries are reimbursable in no-fault. See also Ground Rule 17 of the New York State Worker's Compensation Physical Medicine Fee Schedule.

The applicant did not submit any documentation to refute the respondent's fee schedule defense.

I find that the applicant is not entitled to charge for the PPE supplies/services under CPT code 99072. The assignee is only entitled to the rights to reimbursement allowed to the assignor. See Rubin v. Empire Mut. Ins. Co., 25 N.Y.2d 426 at 429. CPT code 99702 is a new code adopted by the AMA during the COVID pandemic which is not a separately covered expense. Medicare has barred reimbursement for these services and views PPE supplies/services as a general expense incurred in running a medical office like, for example hand sanitizing gels, paper cloth covers utilized on patient examining tables, cleaning supplies, gloves, face shields, face masks, etc.) used generally in a medical office setting and not as a separate supply provided to the patient. CMS has stated that payment for the items/services described by CPT code 99072 is "always bundled into payment for other services and payment for them is subsumed by the payment for the services to which they are incident." Finally, CPT code 99072 is not contained in the New York Workers' Compensation Medical Fee Schedule and is therefore not reimbursable as charged.

Based on the foregoing, the respondent has established its fee schedule defense regarding reimbursement for the PPE charges at issue.

Therefore, the claim of \$1,032.00 for PPE supplies and services is dismissed with prejudice.

Accordingly, the applicant is awarded \$3,462.40 in disposition of this claim.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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
	Michael Banay Physical Therapy P.C.	02/16/22 - 03/03/22	\$607.88	Awarded: \$463.88
	Michael Banay Physical Therapy P.C.	03/04/22 - 04/05/22	\$963.80	Awarded: \$723.80
	Michael Banay Physical Therapy P.C.	04/08/22 - 04/14/22	\$277.68	Awarded: \$205.68
	Michael Banay Physical Therapy P.C.	04/20/22 - 04/28/22	\$527.94	Awarded: \$407.94
	Michael Banay Physical Therapy P.C.	05/05/22 - 05/09/22	\$243.76	Awarded: \$171.76
	Michael Banay Physical Therapy P.C.	05/06/22 - 05/06/22	\$144.70	Awarded: \$120.70
	Michael Banay Physical Therapy P.C.	05/23/22 - 05/25/22	\$289.40	Awarded: \$241.40

	Michael Banay Physical Therapy P.C.	06/02/22 - 06/17/22	\$335.38	Awarded: \$263.38
	Michael Banay Physical Therapy P.C.	06/30/22 - 06/30/22	\$99.06	Awarded: \$75.06
	Michael Banay Physical Therapy P.C.	07/22/22 - 07/22/22	\$99.06	Awarded: \$75.06
	Michael Banay Physical Therapy P.C.	08/02/22 - 08/02/22	\$99.06	Awarded: \$75.06
	Michael Banay Physical Therapy P.C.	08/03/22 - 08/03/22	\$99.06	Awarded: \$75.06
	Michael Banay Physical Therapy P.C.	08/26/22 - 08/26/22	\$99.06	Awarded: \$75.06
	Michael Banay Physical Therapy P.C.	09/08/22 - 09/08/22	\$137.26	Awarded: \$113.26
	Michael Banay Physical Therapy P.C.	09/12/22 - 09/12/22	\$99.06	Awarded: \$75.06
	Michael Banay Physical Therapy P.C.	10/03/22 - 10/13/22	\$198.12	Awarded: \$150.12
	Michael Banay Physical Therapy P.C.	12/19/22 - 01/02/23	\$198.12	Awarded: \$150.12
	Michael Banay Physical Therapy P.C.	01/03/23 - 01/03/23	\$0.00	Denied
Total			\$4,518.40	Awarded: \$3,462.40

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/21/2023 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." See 11 NYCRR §64-3.9(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. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. 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 was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 11 NYCRR §65-4.6(d.)

- 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 CT

SS :

County of Fairfield

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

01/19/2025
(Dated)

Anne Malone

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:
41cb8df05912fa9dbaa5e3099e57eb22

Electronically Signed

Your name: Anne Malone
Signed on: 01/19/2025