

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Wendell Joseph Gorum MD PC
(Applicant)

- and -

New York City Transit Authority
(Respondent)

AAA Case No. 17-24-1340-3214
Applicant's File No. BT23-215570
Insurer's Claim File No. BU202208120017-001
NAIC No. Self-Insured

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 01/06/2025
Declared closed by the arbitrator on 01/06/2025

James DiCarlo, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Laura Weiss, Esq. from Foley, Smit, O'Boyle & Weisman participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$11,469.80**, 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 54 year old EIP reported involvement in a motor vehicle accident on August 12, 2022; claimed related injury and underwent left shoulder arthroscopic surgery provided by the applicant on December 22, 2022.

The applicant submitted a claim for the surgeon and assistant services, for which the respondent asserts a coverage defense on the grounds that the injury at issue did not arise from the use or operation of the subject vehicle.

The issue to be determined at the hearing is whether the respondent has established its coverage defense.

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.

The EIP was involved in a motor vehicle accident as she was boarding a bus owned by New York City Transit Authority when the operator activated the mechanism to close the bus doors, which closed on the EIP before she boarded causing her to fall.

Based on the undisputed facts in this matter, the injuries sustained by the EIP did not arise out of the use or operation of the subject vehicle. See Matter of Manhattan and Bronx Surface Transit Operating Authority v. Gholson, 71 A.D.2d 10042 (App. Div. 2d Dept 71 A.D.2d Dept. 1979.)

This case held that there are three rules applicable to the determination for no fault coverage: (1) the accident must have arisen out of the inherent nature of the automobile, (2) the accident must have arisen within the natural territorial limits of an automobile and the accidental use, loading, or unloading must not have terminated, (3) the automobile must not merely contribute to the cause of the condition which produces the injury, but must itself produce the injury. The court determined that the manual operation of the door by the bus operator, causing it to open and close upon command rather than automatically, was the proximate cause of the EIP's injuries.

In Walton v Lumbermans Mut. Cas. Co., 218 A.D.2d 858,859 (App. Div.3d Dept, 1995) the court determined that while the assignor may have been engaged in the "use" of the motor vehicle, his injuries did not arise from that use.

Based on the foregoing, I find that respondent established that the coverage exclusion stated above applies to this claim.

Accordingly, the claim is dismissed with prejudice.

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 claim is DENIED in its entirety

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.

01/21/2025
(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:
44cdf0f82c4a548b11d105c8eec42039

Electronically Signed

Your name: Anne Malone
Signed on: 01/21/2025