

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Prompt Medical Spine Care PLLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-24-1362-3701
Applicant's File No. NF-718061-1550053
Insurer's Claim File No. 10995447-01
NAIC No. 16616

ARBITRATION AWARD

I, Rebecca Novak, 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 ["RL"]

1. Hearing(s) held on 01/21/2025
Declared closed by the arbitrator on 01/21/2025

Jeremy Davis, Esq. from Sanders Grossman Aronova PLLC participated virtually for the Applicant

Derek Lynch, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,915.07**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills and except for the bill for date of service May 16, 2024, stipulated to the timeliness of Respondent's denials.

3. Summary of Issues in Dispute

Whether Applicant established entitlement to No-Fault insurance compensation for office visits, lumbar injection, and related services, performed to treat Assignor, a 41-year-old male, from April 18, 2024 to May 28, 2024, subsequent to being injured in a motor vehicle accident on June 9, 2021.

Whether lack of medical necessity is precluded in a late denial.

Whether Respondent's timely denials for the aforesaid services performed from April 18, 2024 to May 28, 2024, based on an independent medical exam ("IME") conducted by Dr. Michael Russ on May 24, 2022 with a cutoff date of June 15, 2022, were legally sufficient and should be sustained.

4. Findings, Conclusions, and Basis Therefor

In this No-Fault insurance arbitration, Applicant is seeking as compensation \$1,915.07 for office visits, lumbar injection, and related services, performed from April 18, 2024 to May 28, 2024, to treat Assignor, a 41-year-old male, who was injured in a motor vehicle accident on June 9, 2021. Respondent denied payment of the four bills at issue based on an IME cutoff effective June 15, 2022. Respondent also initially denied payment on three of the bills based on a defense that Assignor is eligible for Workers' Compensation, but stated at the hearing that it was not pursuing that defense.

Both parties appeared at the hearing via Zoom by counsel, presented oral argument, and relied upon documentary submissions. I have reviewed the submissions' documents contained in the American Arbitration Association's ADR Center as of the date of the hearing, said submissions constituting the record in this case.

Stipulations were entered into at the hearing, amongst which were that Applicant established a prima facie case of entitlement of No-Fault compensation for the amount it sought and that except for the bill for date of service May 16, 2024, Applicant's bills were timely denied by Respondent.

No evidence was presented at the hearing to support a fee schedule defense.

Assignor, a 41-year-old male, was a restrained driver of a taxi involved in an accident which occurred on June 9, 2021. The record reflects that there was no loss of consciousness and he went to Presbyterian Hospital on his own following the accident. He was given medication and subsequently discharged home. At the time of the accident, Assignor had complaints of neck, low back, and bilateral shoulder pain. He began treating with physical therapy and chiropractic care, and he underwent MRI testing. Assignor reported having left shoulder surgery in August 2021 and lumbar spine surgery in October 2021 as a result of the accident. Applicant is now seeking reimbursement for office visits, lumbar injection, and related services, performed from April 18, 2024 to May 28, 2024.

Date of Service May 16, 2024

Four bills at issue were denied based on an IME cutoff dated June 15, 2022. It was noted at the hearing that the denial of the bill for date of service May 16, 2024, is late. On its face the denial is untimely. The denial indicated that the bill was dated 05/17/2024, that

Respondent received the bill on 06/24/2024, and the denial was issued on 08/14/2024. It is well established under New York law that an insurer that fails to pay or deny a bill within 30 days of receipt is in most instances precluded from defending the case. See, Presbyterian Hospital v. Maryland Casualty, 90 NY 2d 274, 660 NY2d 536 (1997).

Respondent offered no proof establishing that it complied with the 30 day pay or deny rule, or that it sent timely verification requests to toll the 30 day pay or deny rule. Moreover, a review of the denial indicates that it was predicated upon a defense that does not fall under the exceptions to the 30-day preclusion rule. Accordingly, the amount of \$127.41 billed for date of service May 16, 2024 is awarded.

Respondent timely denied the remaining three bills at issue based on an independent medical exam ("IME") by Dr. Michael Russ on May 24, 2022 with a cutoff date of June 15, 2022. Upon my review of the record, I note that in its specific denials, Respondent stated:

THE SERVICE(S) SUBMITTED WERE RENDERED BEYOND DENIAL, BASED ON A MEDICAL EXAMINATION. ALL FUTURE BENEFITS ARE BEING DENIED BASED ON EXAM ON 5-24-2022 WITH DR. M. RUSS. THE EFFECTIVE DATE OF THIS DENIAL IS 6-15-2022

The arbitrator may . . . independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 NYCRR 65-4.5(o)(1). This regulatory provision was validly enacted. Matter of Medical Society v. Serio, 100 N.Y.2d 854 (2003). Insurance Law § 5106(b), requiring only that claimants be provided the option of arbitration, does not preclude an arbitrator from inquiring into issues deemed relevant. Id. at 872. The provision of 11 NYCRR 65-4.5(o)(1) to the effect that an arbitrator may independently raise any issue that he deems relevant to making an award does not violate the Due Process clause of the United States and New York State Constitutions. 563 Grand Medical, P.C. v. New York State Ins. Dept., 24 A.D.3d 413 (2d Dept. 2005).

With regard to the sufficiency of the denial, I follow and adopt the reasoning set forth by Arbitrator Aaron M. Maslow in AAA Case No. 17-19-1146-1154. Arbitrator Maslow wrote as follows:

In 2020, the Appellate Division held that an insurer's vague and conclusory denial based on an IME not supporting reimbursement, without providing any of the examination's findings, or checking boxes on the NF-10 form to indicate that the denial was based on a lack of medical necessity, lacks the degree of specificity required by statute and case law, which provide that insurers must clearly inform applicants of their position regarding disputed matters by apprising the claimant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated. Matter of Global Liberty Ins. Co. of N.Y. v. Avanguard Supply, Inc., 188 A.D.3d 568 (1st Dept. 2020), sustaining AAA Case No. 17-18-1112-3655 (Corinne Pascariu, Arb., Apr. 24, 2019, and Richard B. Ancowitz, Master Arb., June 7, 2019).

The Insurance Department regulations governing No-Fault claims processing, in 11 NYCRR 65-3.2(e), provide that an insurer must "[c]learly inform the applicant of the insurer's position regarding any disputed matter." The Court of Appeals has held:

Although an insurer may disclaim coverage for a valid reason (Insurance Law, s 167, subd. 8) the notice of disclaimer must promptly apprise the claimant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated. Absent such specific notice, a claimant might have difficulty assessing whether the insurer will be able to disclaim successfully. This uncertainty could prejudice the claimant's ability to ultimately obtain recovery. In addition, the insurer's responsibility to furnish notice of the specific ground on which the disclaimer is based is not unduly burdensome, the insurer being highly experienced and sophisticated in such matters.

General Accident Insurance Group v. Cirucci, 46 N.Y.2d 862, 864 (1979).

While a denial need not set forth a medical rationale, New York University Hospital-Tisch Institute v. Government Employees Ins. Co., 117 A.D.3d 1012 (2d Dept. 2014); A.B. Medical Services, PLLC v. Liberty Mut. Ins. Co., 39 A.D.3d 779 (2d Dept. 2007), it must not be factually insufficient, conclusory, or vague. Nyack Hospital v. Metropolitan Property & Casualty Ins. Co., 16 A.D.3d 564 (2d Dept. 2005).

"This claim is denied based on an examination under oath" is invalid as lacking a sufficiently detailed factual basis; such a basis for denial is too vague and ambiguous to alert the claimant as to the actual grounds. Mega Supply & Billing, Inc. v. American Transit Ins. Co., 9 Misc.3d 1116(A), 2005 N.Y. Slip Op. 51569(U) (Civ. Ct. Kings Co., Eileen Nadelson, J., Oct. 3, 2005). The language used in Respondent's denial is similar: "New York No-Fault benefits have been denied based upon an independent medical examination."

The denial here does not allege that the IME doctor found further services to be medically unnecessary. Neither are Boxes 19 ("Excessive treatment, service or hospitalization") or 21 ("Unnecessary treatment, service or hospitalization") checked. Merely stating, "Based on a medical examination all future benefits are being denied based on exam on 5-24-2022 with Dr. M. Russ. The effective date of this denial is 6-15-2022," does not convey the specific grounds or a legally sufficient defense. It clearly does not convey that the examination was negative and no further treatment was necessary. While I note that a general denial was submitted as well as a specific denial, a general denial is not a substitute for a specific denial which must be submitted with specificity for it to be valid. (In this case, the general denial also lacks specificity.)

I therefore conclude as a matter of law that the defense asserted in Respondent's three timely denial of claim forms regarding the IME of Dr. Russ was legally insufficient. While the issue of medical necessity was discussed at the hearing, based on my determination regarding the insufficiency of the denials, that issue is now academic and need not be considered. I find that Applicant's prima facie case of entitlement to No-Fault compensation stands.

Conclusion

Accordingly, the within arbitration claim is granted in the 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
	Prompt Medical Spine Care, PLLC	04/18/24 - 04/18/24	\$324.69	Awarded: \$324.69
	Prompt Medical Spine Care, PLLC	05/10/24 - 05/10/24	\$324.69	Awarded: \$324.69
	Prompt Medical Spine Care, PLLC	05/16/24 - 05/16/24	\$127.41	Awarded: \$127.41
	Prompt Medical Spine Care, PLLC	05/28/24 - 05/28/24	\$1,138.28	Awarded: \$1,138.28
Total			\$1,915.07	Awarded: \$1,915.07

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- B. The insurer shall also compute and pay the applicant interest set forth below. 08/26/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The date set forth above is the date when the American Arbitration Association received the arbitration request.

For dates of service 4/18/24, 5/10/24, and 5/28/24:

Applicant did not commence arbitration within 30 days after receipt of the denial(s). Therefore, the interest accrual date shall be the said date the American Arbitration Association received the arbitration request. The end date for the period of interest shall be the date of payment of the claim. Interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. See 11 NYCRR 65-3.9, 65-4.5(s)(3).

For date of service 5/16/24:

When a denial is untimely but an applicant did not commence arbitration within 30 days after receipt of it, there are two periods of interest, the first period being tolled by the denial's issuance albeit late. See LMK Psychological Services, P.C. v. State Farm Mutual Automobile Ins. Co., 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009); East Acupuncture, P.C. v. Allstate Ins. Co., 61 A.D.3d 202, 873 N.Y.S.2d 335 (2d Dept. 2009). Applicant did not commence arbitration within 30 days after receipt of the late denial(s). Therefore, the first period of interest shall be from the 30th date after the bill was received to the date of the late denial. The second period of interest shall be from the date when the American Arbitration Association received the arbitration request (as set forth above) to the date of payment of the claim. Interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. See 11 NYCRR 65-3.9, 65-4.5(s)(3).

- C. Attorney's Fees

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

Applicant is entitled to an attorney's fee pursuant to Insurance Law §5106(a). After calculating the sum total of the first-party (No-Fault) benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, subject to the following limitations: In the event the above filing date was prior to Feb. 4, 2015, the attorney's fee is subject to a minimum of \$60.00 and a maximum of \$850.00, per 11 NYCRR 65-4.6(e). In the event the above filing date was on or after Feb. 4, 2015, the attorney's fee is subject to a maximum of \$1,360.00, per 11 NYCRR 65-4.6(d). In the event the above filing date was on or after Feb. 4, 2015

and first-party (No-Fault) benefits are awarded to more than one Applicant herein, the attorney's fee shall be calculated separately for each Applicant, each Applicant's attorney fee being subject to the \$1,360.00 maximum.

- 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, Rebecca Novak, 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)

Rebecca Novak

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:
174c5f35ede131b7dfbb44668baae005

Electronically Signed

Your name: Rebecca Novak
Signed on: 01/21/2025