

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. 17-24-1358-6797

Applicant's File No. AR24-24936

Insurer's Claim File No. 1109301-02

NAIC No. 16616

ARBITRATION AWARD

I, Marcelo Vera, 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 01/08/2025
Declared closed by the arbitrator on 01/08/2025

Alek Beynenson, Esq. from The Beynenson Law Firm, PC 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, **\$3,106.71**, 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 arbitration arises out of treatment to the EIP, EG, a male, involved in a motor vehicle accident on February 08, 2022. Applicant seeks reimbursement in the amount of \$3,106.71 for services performed July 06, 2023 to Mayh 30, 2024. Respondent denies based on a policy violation for failure to attend a properly scheduled independent medical examination with Eric Roth M.D. and Michael Russ M.D. on July 15, 2022 and August 12, 2022.

4. Findings, Conclusions, and Basis Therefor

My decision is based on the arguments of representatives for each party as well as those documents contained in the electronic file maintained by the American Arbitration Association. I have reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

It is Applicant's prima facie obligation to establish its entitlement to payment for each service for which reimbursement is sought. It is well settled that a health care provider establishes its prima facie entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]). Herein, applicant established its prima facie entitlement to first party no-fault benefits by proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits was overdue.

Failure to appear at IME:

Respondent argues that the issue has already been decided by Arbitrator Maryann Mirabelli in AAA # 17-23-1324-6588 and that I must follow the prior linked decision based on the doctrine of collateral estoppel.

Arbitrator Mirabelli rendered an award involving the same EIP, Respondent and defense. Respondent argues that the prior decision was rendered in Respondent's favor. Noting Respondent has sustained its burden of proof that the claimant breached a condition precedent to coverage and all claims be denied retroactively to the date of loss.

The prior linked award states as follows:

Having carefully reviewed the submissions, I am satisfied that the Respondent has met its burden of proof via the production of: (a) properly addressed timely IME notices, dated 6/28/22 and 7/19/22 containing required reimbursement language; (b) a mailing affidavit establishing mailing of the subject notices pursuant to procedures/business practices; and (c) affirmations of non-appearance by the doctors. Contrary to Applicant's counsel contentions, I find no issue with the delay letters for the first two bills (date of services 5/4/22 through 5/31/22 and 6/2/22 through 6/27/22). Applicant made no credible claims of non-receipt of the subject notices, furnished no evidence of having responded thereto or communicated any objection, nor documented any grounds for its non-compliance. After a careful review of the credible relevant evidence and the arguments raised by counsel, I find the Respondent's IME no show defense can be sustained for these claims at issue. In the prior award and the matter at hand today, Respondent's defense was based upon the same grounds. The prior award and this matter involve the same Assignor, Respondent and defense. There is no evidence presented that the prior award was appealed to a Master Arbitrator.

In *A.B. Medical Services PLLC v. New York Central Mutual Fire Ins. Co.*, 2006 N.Y. Slip Op 26131; 12 Misc 3d 500; 2006 N.Y. Misc Lexis 729; (Civil Court, Kings County 3/7/2006), the Court stated: It is well settled that res judicata and collateral estoppel are applicable to arbitration awards, including those rendered in disputes over no-fault benefits, and will bar relitigation of the same claim or issue. Collateral estoppel bars a party from litigating again in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity. See, *Buechel v. Bain*, 97 N.Y.2d. 295, 303 (2001). Two requirements must be met before collateral estoppel can be invoked: (1) There must be an identity of issue, which has necessarily been decided in the prior action and is decisive of the present action; and (2) there must have been a full and fair opportunity to contest the decision now said to be controlling. *Id.* at 303-304

Based upon the foregoing, I find that the prior award has collateral estoppel effect as the identical issue was raised in the prior matter and there was a full and fair opportunity to contest the prior award which is now controlling. See, *Buechel v. Bain*, 97 N.Y.2d. 295 (2001).

Accordingly, in light of the foregoing, based on the arguments of counsel and after a thorough review and consideration of all submissions, I find in favor of the Respondent and DENY the claim. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 NY
SS :
County of Nassau

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

01/23/2025
(Dated)

Marcelo Vera

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:
20457e92782d6277701c3b77b3b4261c

Electronically Signed

Your name: Marcelo Vera
Signed on: 01/23/2025