

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. 17-24-1358-1385

Applicant's File No. AR24-25325

Insurer's Claim File No. 1097979-01

NAIC No. 16616

ARBITRATION AWARD

I, Matthew K. Viverito, 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 01/21/2025
Declared closed by the arbitrator on 01/21/2025

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, **\$3,560.67**, 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

This arbitration arises out of medical treatment for the EIP, a 45 year old male driver, related to injuries sustained in a motor vehicle accident that occurred on 5/7/21. Applicant seeks reimbursement in the amount of \$3,560.67 for office visits, x-ray services and physical therapy performed between 5/23/21 and 5/6/24. Regarding dates of service 6/4/21-1/20/23 in the amount of \$1,868.50, respondent denied the within claim based on the allegation that the EIP was in the course of his employment at the time of the motor vehicle accident. Regarding date of service 5/23/21 in the amount of \$317.98, respondent did not issue a denial of claim. Regarding dates of service 2/13/23-5/6/24 in the amount of \$1,374.19, respondent denied payment based on an

Independent Medical Examination (IME) performed on 12/19/22 by Eric Roth, M.D. with an effective date of 1/16/23. The issues presented are: 1) whether respondent can sustain its workers' compensation defense; 2) whether applicant can establish a prima facie case; 3) whether the services at issue were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in MODRIA. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in MODRIA and maintained by the American Arbitration Association.

As indicated above, regarding dates of service 6/4/21-1/20/23 in the amount of \$1,868.50, respondent denied the within claim based on the allegation that the EIP was in the course of his employment at the time of the motor vehicle accident.

However, at the Workers' Compensation hearing held on 6/9/22, it was determined in the Notice of Decision that based on the claimant's testimony, the motor vehicle accident was not compensable and the claimant may pursue a claim for No-fault benefits.

I find that a determination by the Workers' Compensation Board which informs the claimant that he may pursue a claim for No-fault benefits is tantamount to a finding that the claimant was not in the course of his employment when the loss occurred. (Note: the above-mentioned Notice of Decision was not available to [and/or not reviewed by] the arbitrator[s] who previously decided the within issue in respondent's favor; see AAA #s 17-22-1280-4814; 17-23-1311-3420).

Therefore, I find that respondent has not sustained its workers' compensation defense.

Accordingly, applicant is awarded \$1,868.50 for dates of service 6/4/21-1/20/23.

As indicated above, regarding date of service 5/23/21 in the amount of \$317.98, respondent did not issue a denial of claim.

However, the evidence reveals that applicant presented valid and timely proof of mailing for the above-referenced claim.

Therefore, I find that applicant has established a prima facie case.

Accordingly, applicant is awarded \$317.98 for date of service 5/23/21.

As indicated above, regarding dates of service 2/13/23-5/6/24 in the amount of \$1,374.19, respondent denied payment based on an Independent Medical Examination (IME) performed on 12/19/22 by Eric Roth, M.D. with an effective date of 1/16/23.

Due to the lack of objective findings, Dr. Roth concluded that the patient did not require further treatment. Therefore, I find Dr. Roth's IME sufficient to shift the burden to applicant.

In rebuttal, applicant presented examination reports dated 11/10/22 and 1/20/23

Applicant's 11/10/22 and 1/20/23 examination reports noted neck, back, left shoulder and left knee pain with restricted range of motion in those areas. However, the reports are scant and there were no positive findings noted (e.g., tenderness, muscle spasm, trigger points, orthopedic testing, reflexes, muscle strength, sensation). Therefore, I find applicant's medical records insufficient to rebut the conclusion of Dr. Roth that the patient's injuries had fully healed and/or resolved from a physical medicine and rehabilitation point of view.

Therefore, I find that respondent has sustained its medical necessity defense.

Accordingly, applicant's claim for dates of service 2/13/23-5/6/24 is denied.

Applicant is awarded a total of \$2,186.48.

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.

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Medical		From/To	Claim Amount	Status
	Brooklyn Medical Practice, PC	05/23/21 - 05/23/21	\$168.20	Awarded: \$168.20
	Brooklyn Medical Practice, PC	05/23/21 - 05/23/21	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	06/04/21 - 06/11/21	\$250.58	Awarded: \$250.58
	Brooklyn Medical Practice, PC	07/07/21 - 07/29/21	\$94.74	Awarded: \$94.74
	Brooklyn Medical Practice, PC	09/27/21 - 09/27/21	\$215.85	Awarded: \$215.85
	Brooklyn Medical Practice, PC	10/05/21 - 10/07/21	\$122.20	Awarded: \$122.20
	Brooklyn Medical Practice, PC	11/02/21 - 11/22/21	\$305.93	Awarded: \$305.93
	Brooklyn Medical Practice, PC	01/13/22 - 01/13/22	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	03/10/22 - 03/24/22	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	05/04/22 - 05/10/22	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	06/06/22 - 06/09/22	\$67.28	Awarded: \$67.28
	Brooklyn Medical	07/26/22 -	\$33.64	Awarded:

	Practice, PC	07/26/22		\$33.64
	Brooklyn Medical Practice, PC	09/12/22 - 09/12/22	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	10/14/22 - 10/14/22	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	11/10/22 - 11/14/22	\$160.93	Awarded: \$160.93
	Brooklyn Medical Practice, PC	12/08/22 - 12/19/22	\$67.28	Awarded: \$67.28
	Brooklyn Medical Practice, PC	01/20/23 - 01/20/23	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	02/13/23 - 02/15/23	\$67.28	Denied
	Brooklyn Medical Practice, PC	03/07/23 - 03/22/23	\$108.93	Denied
	Brooklyn Medical Practice, PC	04/02/23 - 04/11/23	\$67.28	Denied
	Brooklyn Medical Practice, PC	05/04/23 - 05/04/23	\$277.87	Denied
	Brooklyn Medical Practice, PC	06/30/23 - 06/30/23	\$33.64	Denied
	Brooklyn Medical Practice, PC	08/18/23 - 08/18/23	\$127.29	Denied
	Brooklyn Medical Practice, PC	09/10/23 - 09/22/23	\$67.28	Denied

	Brooklyn Medical Practice, PC	10/17/23 - 10/17/23	\$33.64	Denied
	Brooklyn Medical Practice, PC	11/07/23 - 11/13/23	\$261.85	Denied
	Brooklyn Medical Practice, PC	02/14/24 - 02/28/24	\$67.28	Denied
	Brooklyn Medical Practice, PC	03/13/24 - 03/27/24	\$160.93	Denied
	Brooklyn Medical Practice, PC	04/08/24 - 04/10/24	\$67.28	Denied
	Brooklyn Medical Practice, PC	05/06/24 - 05/06/24	\$33.64	Denied
Total			\$3,560.67	Awarded: \$2,186.48

B. The insurer shall also compute and pay the applicant interest set forth below. 07/26/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the applicant interest computed from 7/26/24, the date that the within claim was filed, at a rate of 2% per month, simple interest, and ending with the date of the payment of the award, subject to the provisions of 11 NYCRR 65-3.9.

C. Attorney's Fees

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

As noted above, this matter was filed with the AAA after 2/4/15. Thus, the insurer shall pay the applicant an attorney's fee in accordance with 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 NY
SS :
County of Nassau

I, Matthew K. Viverito, 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)

Matthew K. Viverito

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:
688aed177ff8b6f24dc6d0ae6dff73cd

Electronically Signed

Your name: Matthew K. Viverito
Signed on: 01/23/2025