

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. 17-24-1360-5661

Applicant's File No. AR24-25402

Insurer's Claim File No. BC400688

NAIC No. 16616

ARBITRATION AWARD

I, Samiya Mir, 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

1. Hearing(s) held on 01/14/2025
Declared closed by the arbitrator on 01/14/2025

Alek Beynenson from The Beynenson Law Firm, PC participated virtually for the Applicant

Adam Kass from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$497.33**, 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 stems from treatment of Assignor, a 57 year old male who was involved in a motor vehicle accident on September 25, 2019. In dispute are Applicant's claims for physical therapy that took place from November 5, 2023 to February 29, 2024. The issue for determination is whether the services, which were denied based on an IME of Dr. Santiago were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This award was decided on the basis of the arguments raised at the hearing and the documents submitted by the parties contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. This case is linked to AAA Case No. 17-23-1326-4595.

As a threshold matter, Applicant has established its prima facie entitlement to first party no-fault benefits under Article 51 of the Insurance Law, by submitting evidentiary proof that the prescribed statutory billing forms were mailed to and received by the insurer and that payment of no-fault benefits are overdue. See Viviane Etienne Med. Care, P.C. v. Country-Wide Ins., 2013 NY Slip Op. 08430 (2d Dep't 2013). Once Applicant has made out a prima facie case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. See Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 NY3d 312 (2007).

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of further health care services. See Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, No. 2007-715QC, 2008 WL 4222084 (App. Term 2nd Dep't 2008). If an IME report provides a factual basis and medical rationale for a respondent's consultant's opinion that services were not medically necessary, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. See Tremont Med. Diagnostic, P.C. v. Geico Ins., 824 N.Y.S.2d 759 (App. Term 2d Sept. 29, 2006).

The Respondent timely denied the services based on the Independent Medical Examination (IME) of Dr. Santiago dated 10/20/20. Applicant noted that in a prior decision, AAA Case No. 17-23-1326-4595, Arbitrator Berdnick awarded the claim based on the same IME. The decision stated, in pertinent part,

"In support of its contention that the services were not medically necessary, Respondent offers the report by Francisco Santiago, M.D. prepared following an IME performed October 20, 2020. Dr. Santiago notes the Claimant's involvement in the underlying accident, following which he was evaluated at the emergency room for injuries to his neck, bilateral shoulders, lower back, and right leg and ankle. At the time of Dr. Santiago's examination, the Claimant complained of pain in the in the left shoulder and low back. Examination of the cervical and thoracic spine revealed normal ranges of motion. No spasm or tenderness was noted. Range of motion of the lumbar spine and left shoulder was restricted. Acupuncture evaluation revealed the Claimant's tongue to e pink, smooth, with a thin, white coat. Pulse was normal. Tenderness was noted in the lower back and left shoulder. Bilateral shoulder, elbow, wrist, and hand examination did not show any gross instability or swelling. The left shoulder was noted to have a two-inch scar and was tender to palpation. Sensation was intact to touch and position. Deep tendon reflexes were equal and symmetrical. Hoffman and Babinsky signs were negative bilaterally. Straight leg raise in the sitting position was 90 degrees on the right and 70 degrees on the left. Patrick sign was negative bilaterally. The remainder of Dr. Santiago's examination of the Claimant's bilateral hips, knee, ankle, and foot was unremarkable. Upon completion of his examination, Dr. Santiago concluded that the Claimant suffered from sprains and strains to the cervical and thoracic spine, right knee, and right ankle/foot, all of which had resolved as of the date of the IME. However,

Dr. Santiago also determined that the Claimant sustained sprains to the lumbar spine and left shoulder, which had not yet resolved. He further opined that the qi and blood stagnation were in the process of resolving. Therefore, Dr. Santiago concluded that the Claimant could still benefit from physical therapy and acupuncture three times a week for four weeks followed by a reevaluation. Consequently, he determined that physical medicine treatments, including physical therapy and acupuncture, were still medically necessary. After a review of all of the evidence in this matter, overall, I find the IME facially insufficient to sustain Respondent's prima facie burden of establishing a lack of medical necessity for the services at issue. Dr. Santiago opines that the injuries to the Claimant's lumbar spine and left shoulder had not yet resolved as of the date of the IME. Therefore, until such time as the Claimant is reevaluated, as suggested by Dr. Santiago, Dr. Santiago and, consequently, Respondent, has no way of knowing whether the Claimant's injuries would, at that juncture, be fully resolved and whether further treatment would be required. Therefore, absent a further IME by Dr. Santiago, and until such time as Dr. Santiago deems the Claimant's injuries fully resolved, in my view, Respondent's termination of benefits was premature. As such, I am not persuaded that the treatment at issue was not medically necessary."

See AAA Case No. 17-23-1326-4595 (Arb. Berdnik). I see no reason to disturb the reasoning in the linked award and I incorporate it herein. I find that a preponderance of the evidence favors Applicant's position that the Assignor's condition had not resolved as of the date of the IME.

Therefore, having carefully considered the submissions of the parties, the relevant case law and the arguments of respective counsel I find in favor of Applicant.

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
	Brooklyn Medical Practice, PC	11/05/23 - 11/19/23	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	12/03/23 - 12/21/23	\$194.57	Awarded: \$194.57
	Brooklyn Medical Practice, PC	01/04/24 - 01/31/24	\$134.56	Awarded: \$134.56
	Brooklyn Medical Practice, PC	02/23/24 - 02/29/24	\$67.28	Awarded: \$67.28
Total			\$497.33	Awarded: \$497.33

B. The insurer shall also compute and pay the applicant interest set forth below. 08/12/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant's award shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30-day month from the date payment became overdue to the date of the payment of the award pursuant to 11 NYCRR 65-3.9 (a). The end date for the calculation of the period of interest shall be the date of payment of the claim. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.")

C. Attorney's Fees

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

Respondent shall pay Applicant a separate attorney's fee, in accordance with 11 NYCRR 65-4.6(d). Since the within arbitration request was filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial

Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, 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 NY

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

01/29/2025

(Dated)

Samiya Mir

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:
495aeac48563554190a16e768fd6aaa9

Electronically Signed

Your name: Samiya Mir
Signed on: 01/29/2025