

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

United Services Automobile Association
(Respondent)

AAA Case No. 17-24-1364-4681

Applicant's File No. AR24-25416

Insurer's Claim File No. 1414824-19

NAIC No. 25941

ARBITRATION AWARD

I, Claire Gallagher, 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 02/12/2025
Declared closed by the arbitrator on 02/12/2025

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

Nathan Lam, Esq. from Marshall Dennehey participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$957.55**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

Applicant has established its prima facie case to entitlement to No-Fault compensation for its claim.

3. Summary of Issues in Dispute

At issue is whether Respondent has sustained its defense.

This dispute arises from the underlying automobile accident which occurred on 07/17/22 in which Assignor, a 34-year-old male, was involved. At issue are claims for office visits and physical therapy services, Dates of Service 07/18/22-02/02/24. Respondent asserted that the claims should be denied based on Applicant's failure to submit proof of

claim within 45 days of the date upon which the services were rendered as required by 11 NYCRR 65-2.4 (c).

4. Findings, Conclusions, and Basis Therefor

I have reviewed all timely submitted relevant documents contained in the ADR Center record maintained by the American Arbitration Association for this case, and have considered the oral arguments presented at the hearing in this matter. As stipulated to by the parties, Applicant has established its prima facie case of entitlement to No-Fault compensation for its claim. *See Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742 (2d Dept 2004). Once an applicant establishes its prima facie case, the burden then shifts to the insurer to prove its defense. *See CityWide Social Work & Psychological Servs. v. Travelers Indem. Co.*, 3 Misc 3d 608 (Civ Ct, Kings County 2004).

A. 45 Day Rule Defense

Contained in Respondent's submission are Explanation of Benefits forms ("EOBs") which correspond to the claims at issue. Counsel for Applicant asserted that Respondent's defense should be precluded on the grounds that it did not issue denials with respect to the claims. Counsel for Respondent noted that it could upload copies of the same into the ADR Center record for this case. However, as set forth below, based upon a review of the evidence which was timely submitted in this case, I find that the claims were timely submitted to Respondent, and that Respondent has not sustained its defense on the claims.

1. Dates of Service 07/15/22, 07/19/22-07/26/22

Based on a review of the evidence presented in this case, I find that Applicant has submitted evidence sufficient to establish that it timely submitted this claim to Respondent. I find that Respondent did not submit evidence sufficient to rebut Applicant's proof. Accordingly, I find in favor of Applicant on its claim.

2. Date of Service 11/18/22

Contained in Respondent's submission is an EOB form which states that this claim was received on 12/17/22, which is less than 45 days after the Date of Service. Accordingly, I find in favor of Applicant on its claim.

3. Dates of Service 01/02/23-01/25/23

Contained in Respondent's submission is an EOB form which states that this claim was received on 02/28/23, which is less than 45 days after Date of Service 01/25/23. Accordingly, I find in favor of Applicant on its claim.

4. Dates of Service 03/09/23-03/29/23

Contained in Respondent's submission is an EOB form which states that this claim was received on 04/18/23 which is less than 45 days after Date of Service 03/29/23. Accordingly, I find in favor of Applicant on its claim.

5. Dates of Service 01/18/24-01/24/25

Contained in Respondent's submission is an EOB form which states that this claim was received on 02/14/24, which is less than 45 days after the Dates of Service. Accordingly, I find in favor of Applicant on its claim.

6. Date of Service 02/02/24

Based on a review of the evidence presented in this case, I find that Applicant has submitted evidence sufficient to establish that it timely submitted this claim to Respondent. I find that Respondent did not submit evidence sufficient to rebut Applicant's proof. Accordingly, I find in favor of Applicant on its claim.

B. Fee Schedule Defense

Respondent did not present Fee Schedule defenses to the claims.

C. Interest

At the hearing of this matter, counsel for Applicant asserted that interest should run on various dates which were 35 days after its proof of mailing submissions. Counsel for Respondent asserted that interest should run as of 09/09/24, the date upon which Applicant commenced this Arbitration. I am persuaded by Respondent's position and find that interest should run as of 09/09/24, the date upon which Applicant commenced this Arbitration.

Award 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	07/18/22 - 07/18/22	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	07/19/22 - 07/26/22	\$156.78	Awarded: \$156.78
	Brooklyn Medical Practice, PC	11/18/22 - 11/18/22	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	01/02/23 - 01/25/23	\$261.85	Awarded: \$261.85
	Brooklyn Medical Practice, PC	03/09/23 - 03/29/23	\$160.93	Awarded: \$160.93
	Brooklyn Medical Practice, PC	01/18/24 - 01/24/24	\$67.28	Awarded: \$67.28
	Brooklyn Medical Practice, PC	02/02/24 - 02/02/24	\$33.64	Awarded: \$33.64
Total			\$957.55	Awarded: \$957.55

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/09/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay Applicant interest as set forth below. 09/09/24 is the date from which interest shall accrue, at rate of 2% per month and ending with the date of payment of the Award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Respondent shall pay Applicant's attorney's fees 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 Westchester

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

02/12/2025
(Dated)

Claire Gallagher

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:
5e08d759edefa0ba0f17ecab7261b720

Electronically Signed

Your name: Claire Gallagher
Signed on: 02/12/2025