

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. 17-24-1361-6897

Applicant's File No. AR24-25005

Insurer's Claim File No. 1084554

NAIC No. 16616

**ARBITRATION AWARD**

I, Melissa Regina LoFurno-Braxton, 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: WDD

1. Hearing(s) held on 01/22/2025  
Declared closed by the arbitrator on 01/30/2025

Alexander 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, **\$3,821.62**, 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 within award is based upon this arbitrator's review of the record as well as oral argument at the time of the hearing of this matter.

The claimant in this case is a 43 year old male hereinafter "WDD", who was involved in an accident that occurred on 05/29/20. Following the accident, WDD suffered injuries which resulted in the claimant seeking treatment. WDD came under the care of Applicant for treatment. Respondent argues that the bills for DOS:06/05/20-04/08/24 billed in the amount of \$3821.62 was not received by Respondent until the filing of the arbitration herein. Applicant counters that they have in fact established their Prima Facie

case and that Respondent failed to pay or deny the claim within the requisite time period as set forth in the No-Fault statute. Additionally, Respondent argues that Applicant billed in excess of the Fee Schedule.

**ISSUE:**

Whether the Applicant has established its Prima Facie case?

Whether the Applicant billed in excess of the Fee Schedule?

4. Findings, Conclusions, and Basis Therefor

**PRIMA FACIE**

A medical provider must prove that its billing forms were mailed to and received by the insurer, and that the insurer failed to either pay or deny the claim within the requisite 30-day period, in order to meet its prima facie burden in a No-Fault insurance case. *Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 114 A.D.3d 33, 977 N.Y.S.2d 292 (2d Dept. 2013). Therefore, the initial burden is with Applicant to establish its prima facie case before the burden shifts to Respondent.

"Proof that an item was properly mailed gives rise to a rebuttable presumption that the items was received by the addressee." *Vivian Etienne Med. Care, P.C. v. Country-Wide Ins. Co.*, 114 A.D.3d 33, 46 (1 Dept. 2013), *aff'd* 25 N.Y.3d 498 (2015). "The presumption may be created by either proof of actual mailing or proof of a standard office practice or procedure designed to ensure that the items are properly addressed and mailed." *New York & Presbyterian Hosp. v. Allstate Ins.Co.*, 29 A.D.3d 547 (2 Dept. 2006); 46 N.Y. 2d 828, 414 N.Y.S.2d 117, *Nassau Ins. Co. v. Murray*, (1978). However, the presumption of mailing created by a proof of mailing must establish that it was those actual documents relating to this specific claimant/patient that were mailed on the specified date. *See Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Respondent argues that Applicant has not established its Prima Facie with regard to the mailing of the bills at issue. In support of its Prima Facie case, Applicant has submitted proofs of mailing in support of its timely mailing of the bills at issue. Based on my review of the Proofs of Mailing, I find said proofs of mailing to be sufficient. The burden now shifts to Respondent to rebut the presumption of mailing as established by the Applicant.

A review of the record however fails to reveal any supporting evidence to establish its defense based on non-receipt of the bills herein nor does Respondent provide documentation establishing any other defense.

As Respondent has failed to provide any documentation in support of any defense to the bills at issue, Applicant it hereby awarded the claim herein.

**FEE SCHEDULE**

Additionally, as Respondent has failed to provide any documentation in support of a defense based on Fee Schedule, Applicant will be awarded the claim herein as billed.

**Based on the aforementioned, Applicant is awarded the claim in the amount of \$3,821.62.**

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	06/05/20 - 06/05/20	\$114.33	Awarded: \$114.33
	Brooklyn Medical Practice, PC	06/05/20 - 06/29/20	\$646.50	Awarded: \$646.50

	<b>Brooklyn Medical Practice, PC</b>	<b>07/02/20 - 07/23/20</b>	<b>\$212.55</b>	<b>Awarded: \$212.55</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>09/08/20 - 09/30/20</b>	<b>\$411.56</b>	<b>Awarded: \$411.56</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>10/08/20 - 10/27/20</b>	<b>\$284.22</b>	<b>Awarded: \$284.22</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>11/11/20 - 11/27/20</b>	<b>\$160.93</b>	<b>Awarded: \$160.93</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>12/08/20 - 12/29/20</b>	<b>\$134.56</b>	<b>Awarded: \$134.56</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>01/08/21 - 01/27/21</b>	<b>\$100.92</b>	<b>Awarded: \$100.92</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>02/08/21 - 02/23/21</b>	<b>\$194.57</b>	<b>Awarded: \$194.57</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>03/05/21 - 03/29/21</b>	<b>\$128.38</b>	<b>Awarded: \$128.38</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>04/05/21 - 04/26/21</b>	<b>\$228.21</b>	<b>Awarded: \$228.21</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>05/17/21 - 05/28/21</b>	<b>\$67.28</b>	<b>Awarded: \$67.28</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>06/17/21 - 06/17/21</b>	<b>\$33.64</b>	<b>Awarded: \$33.64</b>
	<b>Brooklyn Medical Practice, PC</b>	<b>07/14/21 - 07/14/21</b>	<b>\$61.10</b>	<b>Awarded: \$61.10</b>

	Brooklyn Medical Practice, PC	08/11/21 - 08/24/21	\$215.85	Awarded: \$215.85
	Brooklyn Medical Practice, PC	09/21/21 - 09/21/21	\$61.10	Awarded: \$61.10
	Brooklyn Medical Practice, PC	10/20/21 - 10/27/21	\$122.20	Awarded: \$122.20
	Brooklyn Medical Practice, PC	01/06/22 - 01/19/22	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	02/22/22 - 02/22/22	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	05/17/22 - 05/17/22	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	07/27/22 - 07/27/22	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	03/13/23 - 03/13/23	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	04/04/23 - 04/04/23	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	06/26/23 - 06/26/23	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	08/17/23 - 08/17/23	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	04/08/24 - 04/08/24	\$93.65	Awarded: \$93.65
				Awarded:

<b>Total</b>	<b>\$3,821.62</b>	<b>\$3,821.62</b>
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- B. The insurer shall also compute and pay the applicant interest set forth below. 08/20/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from the AR1 filing date at the 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 the Applicant 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 Suffolk

I, Melissa Regina LoFurno-Braxton, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/21/2025  
(Dated)

Melissa Regina LoFurno-Braxton

**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:**  
1acc5e769712fd5618216f3a32d082d9

### **Electronically Signed**

Your name: Melissa Regina LoFurno-Braxton  
Signed on: 02/21/2025