

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Interventional Spine Medicine Treatment
PLLC
(Applicant)

- and -

Liberty Mutual Insurance Company
(Respondent)

AAA Case No.	17-24-1361-3329
Applicant's File No.	n/a
Insurer's Claim File No.	111595010
NAIC No.	23035

ARBITRATION AWARD

I, John Talay, 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/EIP

1. Hearing(s) held on 02/20/2025
Declared closed by the arbitrator on 02/20/2025

LeeAnn Trupia, Esq. from Law Offices of Hillary Blumenthal LLC (Union City) participated virtually for the Applicant

Cheryl Krzywicki, Esq. from Law Offices of Correia, Conway and Stiefeld participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$163.00**, 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

Whether applicant is entitled to No-Fault reimbursement for the varied medical services in the face of respondent's overarching defense of worker compensation eligibility. There are other defenses presented; however, the decision based on this aforementioned defense will govern the outcome.

There are three cases for consideration. All involve common issues of fact and law. The EIP and the medical provider for the same. Accordingly, a unified decision is

appropriate. The date of the accident is February 26, 2024. Relevant dates of service are discussed below. Assignor/EIP is a 38-year-old male livery driver involved in a two-car MVA. The link cases are as follows:

AAA case number 17 - 24 - 1356 - 0039, d.o.s. 3/6/24, in the amount of \$397.33.

AAA case number 17 - 24 - 1361 - 3329, d.o.s. 4/24/24, in the amount of \$163.00.

AAA case number 17 - 24 - 1361 - 3331, d.o.s. 4/25/24, in the amount of \$224.00.

4. Findings, Conclusions, and Basis Therefor

BOTH SIDES WERE REPRESENTED BY COUNSEL. WRITTEN SUBMISSIONS FROM THE PARTIES WERE DULY FILED AND ARE CONTAINED WITHIN THE ELECTRONIC CASE FOLDER OF THIS FORUM. THEY ARE INCORPORATED, BY REFERENCE, IN THIS DECISION. DOCUMENTS WILL BE IDENTIFIED SPECIFICALLY, AS NEEDED.

The within dispute springs from an underlying motor vehicle accident of February 26, 2024.. Relevant dates of service are outlined above. Assignor/EIP is a 38-year-old male livery driver involved in a two-car MVA accident. Although there are multiple defenses presented, respondent advances a fundamental standing defense, namely a Worker's Compensation defense.

In support of the claim, applicant presents assignment of benefits form, verified billing and contemporaneous medical documentation. Applicant seeks no-fault reimbursement for these services.

Under Section 5102 of the New York Insurance Law, No-Fault first party benefits are reimbursable for all medically necessary expenses due to personal injuries arising out of the use or operation of a motor vehicle. Applicant establishes a prima facie entitlement to judgment as a matter of law by proof that he submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; Mary Immaculate Hosp. v. Allstate Ins. Co. 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Damadian MRI in Canarsie, P.C. v. General Assurance Company, 2006 NY Slip Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006 Appellate Term, 2d Department); Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc. 3rd 128, 784 N.Y.S. 2d 918 (2003).

Pursuant to 11 NYCRR 65-4.5 (O) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant

to making an award that is consistent with the Insurance Law and Department Regulations.

The medical necessity of therapeutic treatment must be proven to justify payment for it. There must be some explanation as to how the treatments will alleviate the symptoms and improve the condition of the patient. There also must be evidence that the treatment took place. The evidence may consist of notes made when the treatment took place or a narrative report. Finally, there must be an explanation of how the treatment affected the patient.

Determination:

Respondent timely denied the above referenced bills indicating, inter alia, that "Worker's Compensation, New York black car fund (NY PCS), is primary for this accident, detailed explanation to follow under separate cover."

The EOB states as follows:

"The claimant has available coverage with the New York Black Car Fund (NYBCF). The NYBCF is a Workers Compensation (WC) carrier that covers wages and medical coverage for those who are in the course and scope of their employment as independent contractors for public/livery use. WC is primary to PIP in this venue. Please direct all Providers to contact the NYBCF at 30 Wall Street, 10th Floor, New York, NY 10005, or 212-269-4800 for reimbursement. - Claim 24000705/ CH: Michael Williams 212 269-4800 Ext. 363

They later correspondence, and included in this case file for the following:

- Worker's Compensation Board, subsequent report of injury;
- Worker's Compensation Board, WCB case # G377 - 6023;
- Worker's Compensation board decision, dated 11/19/24

At the hearing, Respondent's counsel argued that Workers' Compensation was primary because the evidence demonstrated that the Assignor was in the course of his employment at the time of the accident. In support, Respondent submitted the above - describe documents.

It is well settled that, when an individual is injured in an automobile accident during the course of his employment, the individual's employer's Workers Compensation insurance is primary to the no-fault automobile insurance associated with the automobile accident. First, Insurance Law section 5102 (b) (2) provides in pertinent part as follows: (b) "First party benefits" means payments to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle, less: (2) Amounts recovered or recoverable on account of such

injury under state or federal laws providing social security disability benefits, or workers' compensation benefits, or disability benefits under article nine of the workers' compensation law, or Medicare benefits, other than lifetime reserve days and provided further that the Medicare benefits utilized herein do not result in a reduction of such person's Medicare benefits for a subsequent illness or injury.

11 NYCRR 65-3.16 (a) (9) provides: Pursuant to section 5102(b)(2) of the Insurance Law, when the applicant is entitled to workers' compensation benefits due to the same accident, the workers' compensation carrier shall be the sole source of reimbursement for medical expenses. In addition, the Appellate Division, First Department in *Arvatz v. Empire Mut. Ins. Co.*, 171 A.D.2d 262, 575 N.Y.S.2d 836 (1st Dept. 1991) stated: "A reading of the applicable Insurance Department regulation (11 NYCRR § 65-3.19), however, reveals that the no-fault insurer is obligated to pay first-party benefits only if the workers' compensation carrier "denies liability for payment of benefits, in whole or in part." Importantly, there has been no such denial by the Worker's Compensation Board in the case herein. Only if the Workers' Compensation Board, denies liability would plaintiff be entitled to collect no-fault benefits while pursuing his claim with the Workers' Compensation Board. As between no-fault and workers' compensation, the latter is "primary" and an injured party may not "'elect' between work[ers'] compensation benefits and no-fault benefits." See, *Carlo Service Corp. v. Rachmani*, 64 A.D.2d 579, 580, 407 N.Y.S.2d 700.

Furthermore, the Workers' Compensation Board has primary jurisdiction to determine factual issues concerning coverage under the Workers' Compensation Law. *AR Medical Rehabilitation, P.C. v. American Transit Ins. Co.*, 27 Misc.3d 133(A), 910 N.Y.S.2d 403 (Table), 2010 N.Y. Slip Op. 50708(U), 2010 WL 1630124 (App. Term 2d, 11th & 13th Dists. Apr. 13, 2010). Where the evidence is sufficient to raise a question of fact as to whether the eligible injured person was acting as an employee at the time of the accident, the issue must be resolved by the Workers' Compensation Board. *A.B. Medical Services, PLLC v. American Transit Ins. Co.*, 24 Misc.3d 75, 885 N.Y.S.2d 154 (App. Term 9th & 10th Dists. June 18, 2009); *Response Equipment, Inc. v. American Transit Ins. Co.*, 15 Misc.3d 145(A), 841 N.Y.S.2d 823 (Table), 2007 N.Y. Slip Op. 51176(U), 2007 WL 1662679 (App. Term 2d & 11th Dists. June 8, 2007). An insurer's contention that recovery of No-Fault benefits is barred pursuant to Workers' Compensation Law § 11 should not be entertained, but rather the claims must be referred to the Workers' Compensation Board for a determination as to whether the plaintiffs have a valid cause of action to recover No-Fault benefits or whether they are relegated to benefits under the Workers' Compensation Law, as said Board has primary jurisdiction to determine factual issues concerning coverage under the Workers' Compensation Law. *LMK Psychological Services, P.C. v. American Transit Ins. Co.*, 64 A.D.3d 752, 882 N.Y.S.2d 719 (2d Dept. 2009). Primary jurisdiction with respect to determinations as to the applicability of the Workers' Compensation Law has been vested in the Workers' Compensation Board and it is therefore inappropriate for the courts to express views with respect thereto pending determination by the board; thus, where there are factual questions as to the injured person's status as an independent contractor or an employee, resolution is best suited for determination by the board,

and the court should refer the matter to the board for a hearing and determination as to whether the injured person is relegated to benefits under the Workers; Compensation Law. *Dunn v. American Transit Ins. Co.*, 71 A.D.3d 629, 894 N.Y.S.2d 895 (2d Dept. 2010).

A defendant or insurer must show only that "there is potential merit to its claim that the assignor was employed at the time of the accident so as to trigger a determination by the Workers Compensation Board", *Lenox Hill Radiology v. American Transit Insurance Company*, 19 Misc. 3d 358, 851 NYS 2nd 861 (NY City Civil Court 2009). In *Lenox Hill*, the court held that a police accident report indicating that "the assignor is a taxicab driver who was injured while driving a taxicab," is sufficient to establish that the assignor was injured in the course of his daily employment. The court dismissed that complaint, without prejudice, holding that there must be a determination by the Workers Compensation Board to determine coverage.

Based upon a review of the evidence herein and the arguments of counsel, I find that the Respondent has presented sufficient evidence to raise the issue of whether Worker's Compensation is applicable herein. Where an insurer raises a defense that the insured was injured in the course of employment, primary jurisdiction over the claim lies with the Workers Compensation Board. *Arvatz v. Empire Mutual Ins. Co.*, 171 A.D.2d 262, Page 4/7 4. 5. 6. 575 N.Y.S.2d 836 (1st Dept. 1991).

Therefore, this case must be submitted to the Workers Compensation Board first for determination and the remaining issues are therefore deemed moot. Accordingly, Applicant's claim is dismissed without prejudice. 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.

Decision: Accordingly, Applicant's claim(s) is dismissed without prejudice.

This award is in full disposition of all No-Fault benefit claims submitted to this arbitrator.

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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

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

02/24/2025
(Dated)

John Talay

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:
9411fa6e1ff55e8eb88d641a2d02fbe1

Electronically Signed

Your name: John Talay
Signed on: 02/24/2025