

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. 17-24-1366-6613

Applicant's File No. AR24-25782

Insurer's Claim File No. 1127906

NAIC No. 16616

ARBITRATION AWARD

I, Darren Sheehan, 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: Claimant

1. Hearing(s) held on 02/18/2025
Declared closed by the arbitrator on 02/18/2025

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

Samara Halpern from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,706.73**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amount in dispute.

3. Summary of Issues in Dispute

Applicant submitted bills totaling \$3,706.73 for dates of service 3/24/2023-8/30/2024. The bills relate to physical therapy provided for the benefit of the claimant, a 35-year-old male, involved in a motor vehicle accident on 3/22/2023. The bills were denied payment by respondent on the basis of the examination under oath (EUO)

conducted of the claimant wherein respondent claims such testimony established a "fact or founded belief" that the claimant's treated condition was unrelated to the motor accident.

4. Findings, Conclusions, and Basis Therefor

Addressing the "fact or founded belief" basis, I have several times rejected this defense, see below:

I should say off the bat that respondent's denial lacks any specificity to the general assertion that the claimant's "treated condition" was unrelated to the accident.

General Accident Ins. Group v. Cirucci, 46 N.Y.2d 862, 864, 414 N.Y.S.2d 512, 514 (App. Div. 2nd Dept. 1978) wherein that Court set the standard that the Respondent must apprise Applicant with a "high degree of specificity of the ground or grounds on which the disclaimer is predicated." The Court there recognized that "this uncertainty could prejudice the claimant's ability to ultimately obtain recovery."

I doubt any case can be made that respondent's denial here apprised applicant with a *high degree of specificity* of the ground for which it denied its claim. Let's start with the fact that there is no evidence the transcript was provided to the applicant. Even putting that aside, at the very least, respondent should be required to specifically detail in its denial the actual testimony it relied upon to form its basis. Merely stating in the vagueness terms that the "treated condition" (was it the neck, back, shoulder, knee etc.,?) was unrelated to the accident falls far short.

What body part are we referring to?

How was it unrelated?

It should not be up to this arbitrator at the time of the hearing to make respondent's arguments or for that matter try to even find them.

Are we to comb through the transcript to piece together what we believe might have formed respondent's basis for denial?

And also, is it fair to leave the applicant wondering what particular testimony respondent hung to when receiving a denial of its claim?

Is it too difficult to ask that respondent submit the transcript and refer to the page and line numbers, so we have a specific understanding at the time of the denial as to then also allow applicant ample opportunity to refute the denial of their claim?

As such, I reject this basis and 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	03/24/23 - 03/24/23	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	03/27/23 - 03/31/23	\$94.74	Awarded: \$94.74

	Brooklyn Medical Practice, PC	04/03/23 - 04/27/23	\$463.69	Awarded: \$463.69
	Brooklyn Medical Practice, PC	05/02/23 - 05/30/23	\$336.40	Awarded: \$336.40
	Brooklyn Medical Practice, PC	06/01/23 - 06/28/23	\$329.13	Awarded: \$329.13
	Brooklyn Medical Practice, PC	07/06/23 - 07/25/23	\$168.20	Awarded: \$168.20
	Brooklyn Medical Practice, PC	10/03/23 - 10/20/23	\$67.28	Awarded: \$67.28
	Brooklyn Medical Practice, PC	11/03/23 - 11/28/23	\$329.13	Awarded: \$329.13
	Brooklyn Medical Practice, PC	12/06/23 - 12/14/23	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	01/03/24 - 01/30/24	\$261.85	Awarded: \$261.85
	Brooklyn Medical Practice, PC	02/01/24 - 02/28/24	\$235.48	Awarded: \$235.48
	Brooklyn Medical Practice, PC	03/06/24 - 03/20/24	\$201.84	Awarded: \$201.84
	Brooklyn Medical Practice, PC	04/17/24 - 04/17/24	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	05/01/24 - 05/31/24	\$430.05	Awarded: \$430.05
	Brooklyn			

	Medical Practice, PC	06/04/24 - 06/25/24	\$201.84	Awarded: \$201.84
	Brooklyn Medical Practice, PC	07/09/24 - 07/31/24	\$134.56	Awarded: \$134.56
	Brooklyn Medical Practice, PC	08/08/24 - 08/30/24	\$168.20	Awarded: \$168.20
Total			\$3,706.73	Awarded: \$3,706.73

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/24/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from the filing date of this case, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

C. Attorney's Fees

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

As this matter was filed 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 newly promulgated 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, Darren Sheehan, 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)

Darren Sheehan

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:
f6db88cdfb7d50422fe2b16b6d572b65

Electronically Signed

Your name: Darren Sheehan
Signed on: 02/24/2025