

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. 17-24-1362-9948

Applicant's File No. AR24-25394

Insurer's Claim File No. 11403852

NAIC No.

ARBITRATION AWARD

I, Kihyun Kim, 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: the Assignor

1. Hearing(s) held on 02/06/2025, 02/28/2025
Declared closed by the arbitrator on 02/06/2025

Alek 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, **\$1,474.66**, 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 issue presented is whether Applicant established its prima facie case with respect to its claims for reimbursement.

The Assignor (EM) was a 54-year-old female who was involved in a motor vehicle accident on November 21, 2023. Applicant seeks reimbursement in the aggregate amount of \$1,474.66 for three office evaluations of the Assignor and thirty-three dates of physical therapy services provided to the Assignor from November 27, 2023 to July 24, 2024.

4. Findings, Conclusions, and Basis Therefor

This arbitration was conducted using the documentary submissions of the parties contained in the ADR Center, maintained by the American Arbitration Association. I have reviewed the documents contained therein as of the closing of the hearing, and such documents are hereby incorporated into the record of this hearing. The hearing was held by Zoom video conference. Applicant appeared at the hearing by counsel, who presented oral argument and relied upon its documentary submissions. Respondent did not appear at the hearing. There were no witnesses. Further, this matter was heard with linked cases, *Big Apple Pain Management PLLC and American Transit Insurance Company*, AAA Case No: 17-24-1362-9944; *Unicorn Acupuncture, PC and American Transit Insurance Company*, AAA Case No: 17-24-1362-9949; and *North Shore Family Chiropractic PC and American Transit Insurance Company*, AAA Case No: 17-24-1362-9950. The documents uploaded to the ADR Center for this case, as well as for the linked cases, were considered in making this award. Respondent presented no evidence regarding Applicant's charges and the fee schedule at the hearing.

The Assignor was a 54-year-old female who was injured in a motor vehicle accident on November 21, 2023. Following the accident, the Assignor sought treatment for her injuries from various providers, including Applicant.

From November 27, 2023 to July 24, 2024, Applicant conducted three office evaluations of the Assignor and provided thirty-three dates of physical therapy services to the Assignor. Applicant asserted that it billed Respondent for its services. There are no denials in the record for the bills at issue.

Applicant now seeks reimbursement in the aggregate amount of \$1,474.66 for the three office evaluations of the Assignor and thirty-three dates of physical therapy services provided to the Assignor from November 27, 2023 to July 24, 2024.

Analysis - Prima facie case - Offices/PT - DOS 11/27/23-4/24/24

An applicant demonstrates prima facie entitlement to No-Fault benefits under Article 51 of the Insurance Law by "submitting evidence that payment of no-fault benefits are overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." *Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, 14 N.Y.S. 3d 283 (Court of Appeals, 2015).

In the present case, Applicant uploaded to the ADR Center copies of seven bills (each covering a portion of Applicant's claims) in the aggregate amount of \$1,179.17 for the two office evaluations of the Assignor and twenty-seven dates of physical therapy services provided to the Assignor from November 27, 2023 to April 24, 2024. There are no denials in record for the bills at issue. In fact, Respondent failed to upload any defense submission to the record in this proceeding.

In support of its prima facie case, Applicant uploaded a certificate of mailing that identifies Applicant as the sender of an item on June 11, 2024; the certificate is also stamped by the post office with the same date. The certificate includes an entry with the name and address of Respondent as the addressee, and an article description that

includes the Assignor's name, the total combined amount of the first seven bills from 11/27/23 to 4/24/24, and a date of service range of 11/27/23 to 4/24/24 for the bills, that matches the first seven bills at issue in this proceeding. The certificate also indicates that the mailing was a "resubmission" of the bills. Respondent's counsel at the hearing asserted that Applicant's bills were never received by Respondent prior to the commencement of this proceeding. Respondent's counsel noted that Applicant provided no proof of any original submission and that the purported resubmissions were made more than 45 days after the respective dates of service and were therefore late. Applicant's counsel asserted that to establish its prima facie case it only had to establish that its bills were mailed to Respondent and were not paid or denied within 30 days. Applicant's counsel maintained that any assertion that Applicant's bills were untimely under the 45 day rule would have had to have been made in a timely denial. Applicant's counsel noted that Respondent failed to upload any denials for the bills at issue, and in fact, failed to upload any submission to the record. Respondent's counsel acknowledged that Respondent had failed to upload any submission in this case, whether to assert non-receipt or untimeliness based on the 45 day rule.

After reviewing the relevant evidence and considering the oral arguments of the parties, I find that the weight of the evidence favors Applicant. I find that Applicant's evidence is sufficient to establish its prima facie case for the bills at issue. Applicant's certificate of mailing is credible and persuasive proof that Applicant's bills were timely and properly mailed to Respondent and therefore presumptively received by Respondent. There are no denials in the record for the bills at issue, and Respondent failed to upload any evidence to rebut Applicant's proof. Based on the totality of the evidence in the record, Applicant has established its prima facie case and is entitled to reimbursement in the aggregate amount of **\$1,179.17** for two office evaluations of the Assignor and twenty-seven dates of physical therapy services provided to the Assignor from November 27, 2023 to April 24, 2024.

Analysis - Prima facie case - Office/PT - DOS 5/6/24-5/31/24

In the present case, Applicant also uploaded to the ADR Center a copy of a bill in the aggregate amount of \$194.57 for the office evaluation of the Assignor and three dates of physical therapy services provided to the Assignor from May 6, 2024 to May 31, 2024. There is no denial in record for the bill at issue. In fact, Respondent failed to upload any defense submission to the record in this proceeding.

In support of its prima facie case, Applicant uploaded a certificate of mailing that identifies Applicant as the sender of various item on June 11, 2024; the certificate is also stamped by the post office with the same date. The certificate includes an entry with the name and address of Respondent as the addressee, and an article description that includes the Assignor's name, the amount of the bill, and the dates of service, that matches the bill at issue in this proceeding. Respondent's counsel at the hearing asserted that Applicant's bill was never received by Respondent prior to the commencement of this proceeding. Respondent's counsel did not however contest the accuracy or authenticity of Applicant's proof and acknowledged that Respondent had failed to upload any submission in this case.

After reviewing the relevant evidence and considering the oral arguments of the parties, I find that the weight of the evidence favors Applicant. I find that Applicant's evidence is sufficient to establish its prima facie case for the bill at issue. Applicant's certificate of mailing is credible and persuasive proof that Applicant's bill was timely and properly mailed to Respondent and therefore presumptively received by Respondent. There is no denial in the record for the bill at issue, and Respondent failed to upload any evidence to rebut Applicant's proof. Based on the totality of the evidence in the record, Applicant has established its prima facie case and is entitled to reimbursement in the aggregate amount of **\$194.57** for the office evaluation of the Assignor and three dates of physical therapy services provided to the Assignor from May 6, 2024 to May 31, 2024.

Analysis - Prima facie case - PT - DOS 6/5/24-6/24/24

In the present case, Applicant also uploaded to the ADR Center a copy of a bill in the aggregate amount of \$100.92 for the three dates of physical therapy services provided to the Assignor from June 5, 2024 to June 24, 2024. There is no denial in record for the bill at issue. In fact, Respondent failed to upload any defense submission to the record in this proceeding.

In support of its prima facie case, Applicant uploaded a certificate of mailing that identifies Applicant as the sender of various items on July 10, 2024; the certificate is also stamped by the post office with the same date. The certificate includes an entry with the name and address of Respondent as the addressee, and an article description that includes the Assignor's name, the amount of the bill, and the dates of service, that matches the bill at issue in this proceeding. Respondent's counsel at the hearing asserted that Applicant's bill was never received by Respondent prior to the commencement of this proceeding. Respondent's counsel did not however contest the accuracy or authenticity of Applicant's proof and acknowledged that Respondent had failed to upload any submission in this case.

After reviewing the relevant evidence and considering the oral arguments of the parties, I find that the weight of the evidence favors Applicant. I find that Applicant's evidence is sufficient to establish its prima facie case for the bill at issue. Applicant's certificate of mailing is credible and persuasive proof that Applicant's bill was timely and properly mailed to Respondent and therefore presumptively received by Respondent. There is no denial in the record for the bill at issue, and Respondent failed to upload any evidence to rebut Applicant's proof. Based on the totality of the evidence in the record, Applicant has established its prima facie case and is entitled to reimbursement in the aggregate amount of **\$100.92** for the three dates of physical therapy services provided to the Assignor from June 5, 2024 to June 24, 2024.

Conclusion

For the reasons set forth herein, Applicant is awarded reimbursement in the total amount of \$1,474.66, with attorney's fees, interest and the arbitration filing fee as set forth below. 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 specifically raised at the time of the hearing.

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	11/27/23 - 11/27/23	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	11/28/23 - 11/29/23	\$94.74	Awarded: \$94.74
	Brooklyn Medical Practice, PC	12/01/23 - 12/29/23	\$269.12	Awarded: \$269.12
	Brooklyn Medical Practice, PC	01/03/24 - 01/29/24	\$329.13	Awarded: \$329.13
	Brooklyn Medical Practice, PC	02/01/24 - 02/05/24	\$67.28	Awarded: \$67.28

	Brooklyn Medical Practice, PC	03/01/24 - 03/17/24	\$168.20	Awarded: \$168.20
	Brooklyn Medical Practice, PC	04/01/24 - 04/24/24	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	05/06/24 - 05/31/24	\$194.57	Awarded: \$194.57
	Brooklyn Medical Practice, PC	06/05/24 - 06/24/24	\$100.92	Awarded: \$100.92
Total			\$1,474.66	Awarded: \$1,474.66

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/16/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

For dates of service from 11/27/23-5/31/24, interest shall be computed from July 16, 2024, thirty days from presumptive receipt, 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).

For dates of service from 6/5/24-6/24/24, interest shall be computed from August 14, 2024, thirty days from presumptive receipt, 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'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 Suffolk

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

03/08/2025
(Dated)

Kihyun Kim

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:
f3d76fae622c68c9e2942bfeb3dcfa2d

Electronically Signed

Your name: Kihyun Kim
Signed on: 03/08/2025