

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. 17-24-1366-1527

Applicant's File No. AR24-25427

Insurer's Claim File No. 1133783-90

NAIC No. 16616

ARBITRATION AWARD

I, Michelle Murphy-Louden, 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: EIP

1. Hearing(s) held on 03/05/2025
Declared closed by the arbitrator on 03/05/2025

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

Jeffrey Siegel, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,163.54**, 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 35 year old male EIP was reportedly involved in a motor vehicle accident on July 4, 2023, as a driver.

The issue presented is whether Applicant is entitled to reimbursement for physical therapy rendered from July 5, 2023, to April 24, 2024, as the result of the July 4, 2023, motor vehicle accident.

Respondent contended that Applicant's claim was not ripe for arbitration on the basis of outstanding verification.

This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments of the parties and any testimony given during the hearing.

4. Findings, Conclusions, and Basis Therefor

DATES OF SERVICE

7/5/23 - 9/27/23

2/4/24 - 4/24/24

7/5/23 - 7/9/23

Respondent received Applicant's claim for the above dates of service on August 23, 2023.

On October 4, 2023, and November 7, 2023, respectively, Respondent issued initial and follow-up verification requests to Applicant which stated as follows:

1 Please complete this form and return along with the attached correspondence.

We are unable to identify the alleged accident without the completed information listed below

1. Our Insured's Name

2. Our Driver's Name

3. Date of Accident

4. Our Policy Number

5. Our Plate Number

6. State if our Insured is:

? Yellow Cab

? Livery vehicle

? Other

7. Please send us a copy of Police Report or the MV104

8. Our VIN Number, Year, Make/Model of vehicle

9. Please describe injured party:

? Pedestrian

? Insured??s Passenger

? Adverse Operator

10. A brief description of the accident

2 Please submit;

1. Detailed statement describing events surrounding accident and vehicles involved

2. Name, Address, and Telephone Numbers of any Witness

3. Police report

3 provide initial report

8/3/23 - 8/30/23

Respondent received Applicant's claim for the above dates of service on September 18, 2023.

On October 4, 2023, and November 7, 2023, respectively, Respondent issued initial and follow-up verification requests to Applicant which were identical to those issued in connection with Applicant's claim for dates of service July 5, 2023, to July 9, 2023.

9/24/23 - 9/27/23

Respondent received Applicant's claim for the above dates of service on October 19, 2023.

On November 15, 2023, and December 19, 2023, respectively, Respondent issued initial and follow-up verification requests to Applicant which were identical to those issued in connection with Applicant's claim for dates of service July 5, 2023, to July 9, 2023, with the exception that these verification requests indicated that the detailed statement describing the events surrounding the accident and the vehicles involved, the name, address and telephone numbers of any witnesses, and the police report were "requested from claimant".

2/4/24 - 2/16/24

Respondent received Applicant's claim for the above dates of service on March 18, 2024.

On April 16, 2024, and May 20, 2024, respectively, Respondent issued initial and follow-up verification requests to Applicant which stated as follows:

1 Please complete this form and return along with the attached correspondence.

We are unable to identify the alleged accident without the completed information listed below

1. Our Insured's Name

2. Our Driver's Name

3. Date of Accident

4. Our Policy Number

5. Our Plate Number

6. State if our Insured is:

? Yellow Cab

? Livery vehicle

? Other

7. Please send us a copy of Police Report or the MV104

8. Our VIN Number, Year, Make/Model of vehicle

9. Please describe injured party:

? Pedestrian

? Insured's Passenger

? Adverse Operator

10. A brief description of the accident

2 Please submit;

1. Detailed statement describing events surrounding accident and vehicles involved

2. Name, Address, and Telephone Numbers of any Witness

3. Police report

*requested from claimant

3 provide treatment notes

4/19/24 - 4/24/24

Respondent received Applicant's claim for the above dates of service on May 13, 2024.

On May 23, 2024, and June 26, 2024, respectively, Respondent issued initial and follow-up verification requests to Applicant which stated as follows:

1 Please note this claim is also pending additional documentation from claimant and the attorney to verify the facts and circumstances surrounding this motor vehicle accident.

2 POLICE REPORT

3 MV104 REPORT FROM OUR DRIVER

On January 31, 2024, Applicant successfully faxed a verification response to Respondent which consisted of a copy of the initial evaluation report. Applicant advised that the additional information requested was not in its possession.

On June 12, 2024, Applicant successfully faxed a verification response to Respondent which consisted of copies of a re-evaluation report and treatment notes.

ANALYSIS

In Doshi Diagnostic Imaging Servs. v. State Farm Ins. Co., 16 Misc.3d 42 (App. Term, 2nd Dept., 2007) the court held that the reference to "parties" and "party" was not limited to the applicant for No-Fault benefits; rather, the provisions of 11 N.Y.C.R.R. §§65-3.5(b) and (c) "clearly contemplate that an applicant may not be the only appropriate 'party' from whom...verification may most readily be obtained". Id. at 43.

Pursuant to the foregoing, Respondent was permitted by the No-Fault Regulation to delay Applicant's claims for the information requested from the EIP. However, in Island Life Chiropractic, P.C. v. Travelers Ins. Co., 2019 NY Slip Op 51273(U) [App. Term, 2nd Dept.], the court held that where an insurer was relying upon the defense that an action was premature based upon outstanding verification the insurer had a prima facie burden at trial to demonstrate that it timely mailed the verification requests. In this case, although the verification requests issued to Applicant were copied to the EIP and his attorneys Respondent has failed to submit proof that it mailed the verification requests to the EIP and his attorneys. Therefore, I find that Respondent has failed to establish that it tolled Applicant's claims for the above dates of service for the verification sought from the EIP and as such I find Applicant entitled to reimbursement for same as Applicant did submit the medical records requested of it.

With respect to the amount of interest awarded Applicant, I find as follows:

The evidence submitted shows Respondent received Applicant's final verification response on June 12, 2024. Therefore, I find Applicant entitled to the payment of interest calculated in accordance with 11 N.Y.C.R.R. §65-3.9(a) from July 13, 2024, to the date of payment of this Award.

DATES OF SERVICE

10/17/23 - 1/31/24

10/17/23

Respondent received Applicant's claim for the above date of service on November 30, 2023.

On June 25, 2024, and July 29, 2024, respectively, Respondent issued initial and follow-up verification requests to Applicant.

11/3/23 - 11/16/23

Respondent received Applicant's claim for the above dates of service on December 16, 2023.

On June 25, 2024, and July 29, 2024, respectively, Respondent issued initial and follow-up verification requests to Applicant.

12/1/23

Respondent received Applicant's claim for the above date of service on January 22, 2024.

On June 25, 2024, and July 29, 2024, respectively, Respondent issued initial and follow-up verification requests to Applicant.

1/5/24 - 1/31/24

Respondent received Applicant's claim for the above dates of service on February 13, 2024.

On June 25, 2024, and July 29, 2024, respectively, Respondent issued initial and follow-up verification requests to Applicant.

ANALYSIS

In Boulevard Multispec Medical, P.C. v. MVAIC, 19 Misc.3d 138(A) (App. Term, 2nd Dept., 2008), the court held that a verification request issued after the expiration of the 30-day period for paying or denying No-Fault claims does not toll the payment due date.

The verification requests issued by Respondent in connection with Applicant's claims for the above dates of service were all issued well beyond the expiration of the 30-day pay or deny time period. Therefore, I find that they did not toll the pay or deny due date of these claims and as such Applicant is entitled to reimbursement.

With respect to the amount of interest awarded Applicant, I find as follows:

Respondent received Applicant's claim for date of service October 17, 2023, on November 30, 2023. Therefore, I find Applicant entitled to the payment of interest calculated in accordance with 11 N.Y.C.R.R. §65-3.9(a) from December 31, 2023, to the date of payment of this Award.

Respondent received Applicant's claim for dates of service November 3, 2023, to November 16, 2023, on December 16, 2023. Therefore, I find Applicant entitled to the payment of interest calculated in accordance with 11 N.Y.C.R.R. §65-3.9(a) from January 16, 2024, to the date of payment of this Award.

Respondent received Applicant's claim for date of service December 1, 2023, on January 22, 2024. Therefore, I find Applicant entitled to the payment of interest calculated in accordance with 11 N.Y.C.R.R. §65-3.9(a) from February 22, 2024, to the date of payment of this Award.

Respondent received Applicant's claim for dates of service January 5, 2024, to January 31, 2024, on February 13, 2024. Therefore, I find Applicant entitled to the payment of interest calculated in accordance with 11 N.Y.C.R.R. §65-3.9(a) from March 15, 2024, to the date of payment of this Award.

AMOUNT AWARDED

On the same day as the within case was heard, I also heard linked cases 17-24-1366-1486 (Unicorn Acupuncture, PC) and 17-24-1366-1485 (North Shore

Family Chiropractic, PC). It is to be noted that the arbitration requests for all three cases were received by AAA on September 20, 2024. It is also to be noted that Applicant, Unicorn, and North Shore all prevailed on their arbitration claims, which is an important factor as to the amounts awarded each as discussed below.

A review of the evidence submitted by Applicant, Unicorn, and North Shore shows that on many of the dates of service claimed by each party the EIP received chiropractic treatment, acupuncture, and physical therapy. Because the defense that an applicant's fees are not in accordance with the Fee Schedule is not subject to preclusion (see *Surgicare Surgical Associates v. National Interstate Ins. Co.*, 50 Misc.3d 85, App. Term, 1st Dept., 2015 aff'g 46 Misc.3d 736, N.Y.C. Civ. Ct., Bronx Co., 2014; *Z.M.S. & Y Acupuncture, P.C. v. GEICO Gen. Ins. Co.*, 58 Misc. 3d 143(A), App. Term, 2nd Dept., 2017), the RVU limitation Ground Rules apply in this case as well as in the North Shore and Brooklyn Medical cases.

With respect to each date of service at issue, I find as follows:

7/5/23

For the above date of service, Applicant billed CPT codes 99204, 97010, and 97014. As the EIP did not receive acupuncture or chiropractic treatment on the above date of service, Applicant is awarded the total Fee Schedule billed amount of \$217.06.

7/9/23

8/15/23

8/16/23

8/30/23

9/24/23

9/27/23

11/6/23

11/16/23

12/1/23

1/5/24

1/31/24

2/4/24

4/19/24

4/24/24

For each of the above dates of service, (1) Applicant billed CPT codes 97014 (2.66 RVU's) and 97010 (0.55 RVU's), (2) Unicorn billed CPT codes 97811 (3.04 RVU's) and 97810 (3.55 RVU's), and (3) North Shore billed CPT codes 98940 (4.57 RVU's) and 97124 (2.62 RVU's). Thus, for each of the above dates of service the EIP received 16.99 RVU's of treatment. However, pursuant to Physical Medicine Ground Rule 11, Acupuncture Medicine Ground Rule 1B, and Chiropractic Physical Medicine Ground Rule 3 the EIP was only entitled to receive a total of 12.0 RVU's of treatment for all three providers combined. As such, the treatment received by the EIP exceeded the RVU limit by 4.99 RVU's.

As Applicant, Unicorn, and North Shore filed for arbitration on the same day, as a matter of equity I will apportion the 4.99 RVU overage amongst the three providers. Therefore, Applicant, Unicorn, and North Shore will each have their reimbursement amounts reduced by 1.66 RVU's.

Applicant billed for a total of 3.21 RVU's which is reduced to 1.55 RVU's. The physical medicine conversion factor in Applicant's region is \$10.48. Therefore, for each of the above dates of service Applicant is awarded the amount of \$16.24.

8/3/23

For the above dates of service, (1) Applicant billed CPT codes 97014 (2.66) and 97010 (0.55 RVU's) as well as CPT code 99214, and (2) Unicorn billed CPT codes 97811 (3.04 RVU's) and 97810 (3.55 RVU's). Thus, for the above date of service the EIP received 9.75 RVU's of treatment subject to the RVU limitation Ground Rules. Thus, 2.25 RVU's remain for treatment. As a matter of equity, I will apportion the 2.25 RVU's amongst the two providers, each receiving reimbursement for 1.125 RVU's. Therefore, Applicant is awarded the amount of \$11.79 for CPT codes 97014 and 97010 as well as the billed Fee Schedule amount of \$93.65 for CPT code 99214 for a total award amount of \$105.44 for the above date of service.

10/17/23

For the above date of service, (1) Applicant billed CPT codes 97014 (2.66) and 97010 (0.55 RVU's), (2) Unicorn billed CPT codes 97811 (3.04 RVU's) and 97810 (3.55 RVU's), and (3) North Shore billed CPT codes 99212 (4.47 RVU's) and 98940 (4.57 RVU's). Thus, the EIP received 18.95 RVU's of treatment. However, pursuant to Chiropractic Physical Medicine Ground Rule 2, Acupuncture Medicine Ground Rule 1A, and Physical Medicine Ground Rule 8, the EIP was only entitled to receive a total of 15.0 RVU's of treatment for all three providers combined. As such, the treatment received by the EIP exceeded the RVU limit by 3.95 RVU's.

As Applicant, Unicorn, and North Shore filed for arbitration on the same day, as a matter of equity I will apportion the 3.95 RVU overage amongst the three providers. Therefore, Applicant, Unicorn, and North Shore will each have their reimbursement amounts reduced by 1.32 RVU's.

Applicant billed for a total of 3.21 RVU's which is reduced to 1.89 RVU's. Thus, Applicant is awarded the amount of \$19.81 for the above date of service.

11/3/23

For the above date of service, (1) Applicant billed CPT codes 97014 (2.66) and 97010 (0.55 RVU's) as well as CPT code 99214, (2) Unicorn billed CPT codes 97811 (3.04 RVU's) and 97810 (3.55 RVU's), and (3) North Shore billed CPT codes 98940 (4.57 RVU's) and 97124 (2.62 RVU's). Thus, for the above date of service the EIP received 16.99 RVU's of treatment subject to the RVU limitation Ground Rules. However, pursuant to Physical Medicine Ground Rule 11, Acupuncture Medicine Ground Rule 1B, and Chiropractic Physical Medicine Ground Rule 3 the EIP was only entitled to receive a total of 12.0 RVU's of treatment for all three providers combined. As such, the treatment received by the EIP exceeded the RVU limit by 4.99 RVU's.

As Applicant, Unicorn, and North Shore filed for arbitration on the same day, as a matter of equity I will apportion the 4.99 RVU overage amongst the three providers. Therefore, Applicant, Unicorn, and North Shore will each have their reimbursement amounts reduced by 1.66 RVU's.

Applicant billed for a total of 3.21 RVU's of treatment subject to the RVU limitation Ground Rules which is reduced to 1.55 RVU's. Thus, Applicant is awarded the amount of \$16.24 for CPT codes 97014 and 97010 as well as the billed Fee Schedule amount of \$93.65 for CPT code 99214 for a total award amount of \$109.89 for the above date of service.

2/16/24

For each of the above dates of service, (1) Applicant billed CPT codes 97014 (2.66) and 97010 (0.55 RVU's) as well as CPT code 99214, (2) Unicorn billed CPT codes 97811 (3.04 RVU's) and 97810 (3.55 RVU's), and (3) North Shore billed CPT codes 98940 (4.57 RVU's) and 97124 (2.62 RVU's). Thus, the EIP received 16.99 RVU's of treatment. However, pursuant to Chiropractic Physical Medicine Ground Rule 2, Acupuncture Medicine Ground Rule 8, the EIP was only entitled to receive a total of 15.0 RVU's of treatment for all three providers combined. As such, the treatment received by the EIP exceeded the RVU limit by 1.99 RVU's.

As Applicant, Unicorn, and North Shore filed for arbitration on the same day, as a matter of equity I will apportion the 1.99 RVU overage amongst the three providers. Therefore, Applicant, Unicorn, and North Shore will each have their reimbursement amounts reduced by 0.66 RVU's.

Applicant billed for a total of 3.21 RVU's of treatment subject to the RVU limitation Ground Rules. which is reduced to 2.55 RVU's. Thus, Applicant is awarded the amount of \$26.72 for CPT codes 97014 and 97010 as well as the billed Fee Schedule amount of \$93.65 for CPT code 99214 for a total award amount of \$120.37 for the above date of service.

4/19/24

For the above date of service, (1) Applicant billed CPT codes 97014 (2.66) and 97010 (0.55 RVU's) as well as CPT code 99214, (2) Unicorn billed CPT codes 97811 (3.04 RVU's) and 97810 (3.55 RVU's), and (3) North Shore billed CPT codes 99212 (4.57 RVU's) and 98940 (4.57 RVU's). Thus, the EIP received 18.95 RVU's of treatment subject to the RVU limitation Ground Rules. However, pursuant to Chiropractic Physical Medicine Ground Rule 2, Acupuncture Medicine Ground Rule 1A, and Physical Medicine Ground Rule 8, the EIP was only entitled to receive a total of 15.0 RVU's of treatment for all three providers combined. As such, the treatment received by the EIP exceeded the RVU limit by 3.95 RVU's.

As Applicant, Unicorn, and North Shore filed for arbitration on the same day, as a matter of equity I will apportion the 3.95 RVU overage amongst the three providers. Therefore, Applicant, Unicorn, and North Shore will each have their reimbursement amounts reduced by 1.32 RVU's.

Applicant billed for a total of 3.21 RVU's which is reduced to 1.89 RVU's. Thus, Applicant is awarded the amount of \$19.81 for CPT codes 97014 and 97010 as well as the billed Fee Schedule amount of \$93.65 for CPT code 99214 for a total award amount of \$120.37 for the above date of service.

ACCORDINGLY, APPLICANT IS AWARDED THE AMOUNT OF \$766.29 TOGETHER WITH INTEREST, ATTORNEY'S FEE, AND FILING FEE AS SET FORTH BELOW.

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	07/05/23 - 07/05/23	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	07/05/23 - 07/09/23	\$67.28	Awarded: \$49.88
	Brooklyn Medical Practice, PC	08/03/23 - 08/15/23	\$228.21	Awarded: \$154.16
	Brooklyn Medical	09/24/23 -	\$67.28	Awarded:

	Practice, PC	09/27/23		\$32.48
	Brooklyn Medical Practice, PC	10/17/23 - 10/17/23	\$33.64	Awarded: \$19.81
	Brooklyn Medical Practice, PC	11/03/23 - 11/06/23	\$194.57	Awarded: \$142.37
	Brooklyn Medical Practice, PC	12/01/23 - 12/01/23	\$33.64	Awarded: \$16.24
	Brooklyn Medical Practice, PC	01/05/24 - 01/31/24	\$67.28	Awarded: \$32.48
	Brooklyn Medical Practice, PC	02/04/24 - 02/16/24	\$160.93	Awarded: \$136.61
	Brooklyn Medical Practice, PC	04/19/24 - 04/24/24	\$160.93	Awarded: \$32.48
Total			\$1,163.54	Awarded: \$766.29

B. The insurer shall also compute and pay the applicant interest set forth below. 12/31/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to 11 N.Y.C.R.R. §65-3.9(a), the insurer shall calculate interest at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month.

Date of Service 10/17/23: Interest is to be calculated pursuant to 11 N.Y.C.R.R. §65-3.9(a) from 12/31/23 to the date of payment of this Award.

Dates of Service 11/3/23 - 11/16/23: Interest is to be calculated pursuant to 11 N.Y.C.R.R. §65-3.9(a) from 1/16/24 to the date of payment of this Award.

Date of Service 12/1/23: Interest is to be calculated pursuant to 11 N.Y.C.R.R. §65-3.9(a) from 2/22/24 to the date of payment of this Award.

Dates of Service 1/5/24 - 1/31/24: Interest is to be calculated pursuant to 11 N.Y.C.R.R. §65-3.9(a) from 3/15/24 to the date of payment of this Award.

Dates of Service 7/5/23 - 9/27/23 and 2/4/24 - 4/24/24: Interest is to be calculated pursuant to 11 N.Y.C.R.R. §65-3.9(a) from 7/13/24 to the date of payment of this Award.

C. Attorney's Fees

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

The insurer shall pay the Applicant an attorney's fee in accordance with 11 N.Y.C.R.R. §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 Saratoga

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

03/11/2025
(Dated)

Michelle Murphy-Louden

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:
f14f2d754b08af4a873a6ab967324608

Electronically Signed

Your name: Michelle Murphy-Louden
Signed on: 03/11/2025