

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. 17-24-1367-6450

Applicant's File No. AR24-25619

Insurer's Claim File No. 1032007

NAIC No. 16616

ARBITRATION AWARD

I, Giovanna Tuttolomondo, 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

1. Hearing(s) held on 03/14/2025
Declared closed by the arbitrator on 03/14/2025

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

Luke Rosenberger, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,490.36**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

It was stipulated that the only issue in controversy is that of medical necessity.

3. Summary of Issues in Dispute

The Assignor, AMAE, now a 34-year-old male, was a passenger in a motor vehicle involved in an accident on June 28, 2018. Thereafter, the Assignor sought medical attention for the injuries sustained in the accident. At issue in this case are claims totaling \$ 1,490.36, representing physical therapy and follow-up visits between January 6, 2019 and June 22, 2020. Respondent denied Applicant's claims for reimbursement

based upon the Independent Medical Examination ("IME") performed on October 17, 2018 by David Manevitz, D.O. ^[1] The only issue presented is that of medical necessity. No fee schedule issues were raised at the hearing.

[1] Please note: the IME report was uploaded as part of the Record in an associated matter filed under AAA Case Number 17-24-1367-6455, which was heard on the same date of the hearing of this matter. Since the parties were represented by the same counsel on all associated matters heard on March 14, 2025, the IME report will be incorporated by reference herein.

4. Findings, Conclusions, and Basis Therefor

The decision in this case is based upon the oral arguments of the parties' representatives at the video/Zoom hearing and upon my review of the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association. I have reviewed the documents in MODRIA as of the date of closing of this file and incorporate, and rely upon, said documents in making my decision.

The burden is on the insurer-Respondent to present sufficient evidence to establish a lack of medical necessity for the services rendered. The insurer bears the burden of production. Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 13 Misc. 3d 136(A), 831 N.Y.S.2d 351(Table)(App. Term 1st Dept. 2006).

To establish a medical necessity defense, an insurer must present a sworn-to peer review or an independent medical review report which sets forth a factual basis and medical rationale for the doctor or professional's opinion that the services were not medically necessary. Elmont Open MRI & Diagnostic Radiology, P.C. v. Tri-State Consumer Ins. Co., 34 Misc. 3d 141(A), 950 N.Y.S. 2d 491 (Table) (App. Term 9th and 10th Jud. Dists. 2012).

Herein, Dr. Manevitz records that the Assignor presented at the IME with complaints of pain in multiple areas of his body. Range of motion was decreased in the lumbar spine, right shoulder and right knee. Dr. Manevitz concluded that lumbar, right shoulder and right knee sprains were *resolving*, not resolved. Further, Dr. Manevitz noted that there was a mild disability. In addition, Dr. Manevitz states in his report that the Assignor should be referred to a specialist for other treatment options. Given the reduced range of motion and taking into consideration that the Assignor's condition was not resolved at the time of the IME, a cutoff of benefits was premature. In turn, Dr. Manevitz's IME report fails to rebut the presumption of medical necessity attached to Applicant's claims. Parenthetically, Applicant's submission contains medical reports which further establish that the Assignor's condition was not resolved at the time of the IME. I award reimbursement.

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
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	Brooklyn Medical Practice, PC	01/06/19 - 01/18/19	\$265.43	Awarded: \$265.43
	Brooklyn Medical Practice, PC	02/03/19 - 02/03/19	\$64.65	Awarded: \$64.65
	Brooklyn Medical Practice, PC	03/27/19 - 03/27/19	\$136.13	Awarded: \$136.13
	Brooklyn Medical Practice, PC	04/04/19 - 04/04/19	\$64.65	Awarded: \$64.65
	Brooklyn Medical Practice, PC	07/30/19 - 07/30/19	\$136.13	Awarded: \$136.13
	Brooklyn Medical Practice, PC	08/01/19 - 08/20/19	\$452.55	Awarded: \$452.55
	Brooklyn Medical Practice, PC	09/11/19 - 09/11/19	\$42.51	Awarded: \$42.51
	Brooklyn Medical Practice, PC	11/26/19 - 11/26/19	\$113.99	Awarded: \$113.99
	Brooklyn Medical Practice, PC	12/05/19 - 12/05/19	\$64.65	Awarded: \$64.65
	Brooklyn Medical Practice, PC	01/23/20 - 01/23/20	\$64.65	Awarded: \$64.65
	Brooklyn Medical Practice, PC	05/14/20 - 05/14/20	\$42.51	Awarded: \$42.51
	Brooklyn Medical Practice, PC	06/22/20 - 06/22/20	\$42.51	Awarded: \$42.51

Total	\$1,490.36	Awarded: \$1,490.36
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- B. The insurer shall also compute and pay the applicant interest set forth below. 09/30/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See, generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217, 906 N.E.2d 1046 (2009).

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)." This amendment takes into account that the maximum attorney fee has been raised from \$850.00 to \$1,360.00.

- 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 Queens

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

03/17/2025
(Dated)

Giovanna Tuttolomondo

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:
81b74f2a178d75a683dcb00630d668b4

Electronically Signed

Your name: Giovanna Tuttolomondo
Signed on: 03/17/2025