

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. 17-24-1366-1482

Applicant's File No. AR24-25439

Insurer's Claim File No. 1090947-01

NAIC No.

ARBITRATION AWARD

I, Corinne Pascariu, 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 03/27/2025
Declared closed by the arbitrator on 03/27/2025

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

Derek Lynch, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,358.78**, 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

Background

Assignor is a male who was 26-years-old when he was injured as the driver of a motor vehicle involved in an accident on November 19, 2020. Respondent alleges that Assignor was in the course of his employment at the time of the accident and, as such, that the claim is barred by Workers' Compensation as he. Additionally, Respondent raises a lack of medical necessity defense.

Issues:

Whether Respondent established that Applicant is eligible for Workers' Compensation. If not, whether Respondent made out a prima facie case of lack of medical necessity.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center maintained by the American Arbitration Association as of the date of this award and considered the oral arguments of the parties' representatives. There were no witnesses.

To receive payment of a claim, Applicant "need only file a 'proof of claim' (11 NYCRR 65.11(k)(3)), and the insurers are obliged to honor it promptly or suffer the statutory penalties." Dermatossian v. New York City Transit Authority, 67 N.Y.2d 219, 224, 501 N.Y.S.2d 784, 787 (1986). Furthermore, the No-Fault law requires a carrier to either pay or deny a claim for No-Fault benefits within thirty (30) days from the date an applicant supplies proof of claim. See, Insurance Law §5106 (a) and 11 NYCRR 65-3.8. I find that Applicant established a prima facie case of entitlement to reimbursement of its claim, by submitting evidence that the prescribed statutory billing form was mailed and received, and that the Respondent failed to either pay or deny the claim within the requisite 30-day period. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 14 N.Y.S.3d 283 (2015); Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Applicant's evidence establishes that it timely submitted the claims.

Late Submission

Respondent submitted supporting documents on March 26, 2025, the day before hearing. This claim was filed on February 26, 2019. While, as an Arbitrator, I can use my discretion to allow a late submission, see 11 NYCRR 65-4.2 (b)(3)(iv), I will not allow a late submission when it is provided less than thirty days prior to the first scheduled hearing without good cause shown. None has been shown here. Accordingly, these documents are precluded. Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S. 762 (2d Dept. 2009).

The No-Fault law requires a carrier to either pay or deny a claim for No-Fault benefits within thirty (30) days from the date an applicant supplies proof of claim. See, Insurance Law §5106 (a) and 11 NYCRR 65-3.8.

Since Respondent failed to timely its defense, including denials, it cannot establish that the claims were timely denied within 30 days.

Workers' Compensation

In spite of the late submission, Respondent continued to assert that assignor is barred from no-fault coverage because he was working as a livery driver at the time of the accident.

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). The insurer must proffer competent evidence in admissible form of the alleged facts giving rise to its contention that Workers' Compensation benefits are available. Westchester Medical Center v. American Transit Ins. Co., 60 A.D.3d 848, 875 N.Y.S.2d 246 (2d Dept. 2009).

Respondent provided no admissible evidence to substantiate this defense.

Moreover, I note that the issue concerning worker's compensation was previously decided by Arbitrator Antonietta Russo in Advanced Orthopedics & Joint Preservation PC v. American Transit Insurance Company, AAA Case No. 17-21-1228-6355 (5/4/2023, Antonietta Russo, Arb.)

Respondent's counsel asserts that the police report indicates that the Assignor was driving a taxi and had a passenger in the vehicle at the time of the accident. I disagree with counsel and cannot jump to such a conclusion, especially when the record contains a letter dated October 13, 2022 with letterhead from The BlackCar Fund that states:

Black Car Fund's investigation determined that the claimant was not acting in the course and scope of his employment at the time of the loss. Black Car Fund claim closed without awards made to or on behalf of the above-described claimant on 9/30/21.

Furthermore, having reviewed all of the evidence, I find that Respondent has not met its very low burden of establishing that the injured party was in the course of his employment at the time that the accident occurred. Absent any other evidence, I cannot make the connection. Therefore, I find this basis of the denial unsubstantiated.

This decision was sustained by Master Arbitrator James Skelton in Advanced Orthopedics & Joint Preservation PC v. American Transit Insurance Company AAA Claim No. 99-21-1228-6355, (8/17/23, James Skelton, Arb.)

Respondent/Appellant argues on appeal that injured party is a Black Car operator and that he was operating a Black Car insured by the Respondent/Appellant when he was involved in a collision on 11/19/20. The claimant commenced a proceeding before the Workers' Compensation Board for benefits from his employer (Black Car Fund) under Workers' Compensation Law (WCB Case #G2906988). Respondent/Appellant argues on 06/28/21 the Workers' Compensation Judge found that the claimant was entitled to benefits under Workers' Compensation law. Respondent/Appellant also argues that it

submitted the NF-2 and no-fault records demonstrating that the claim was denied based on a peer review. Applicant/Appellee argues that Respondent/Appellant argues on appeal that injured party is a Black Car operator and that he was operating a Black Car insured by the Respondent/Appellant when he was involved in a collision on 11/19/20. The claimant commenced a proceeding before the Workers' Compensation Board for benefits from his employer (Black Car Fund) under Workers' Compensation Law (WCB Case #G2906988). Respondent/Appellant argues on 06/28/21 the Workers' Compensation Judge found that the claimant was entitled to benefits under Workers' Compensation law. Respondent/Appellant also argues that it submitted the NF-2 and no-fault records demonstrating that the claim was denied based on a peer review. The Applicant/Appellee argues on appeal that the NFA, after reviewing Dr. Nason's peer review report, determined that Respondent/Appellant failed to sustain its burden of proof. Finally, the Applicant/Appellee argues that the NFA, in examining the evidence and listening to the arguments of the parties, issued an award was rational and correct as a matter of law.

The NFA discussed the workers compensation and peer review defenses in the award stating

"In the instant matter, Respondent maintains that the Assignor was in the course of employment at the time of the accident and as such, Worker's Compensation is the primary coverage for the claim in dispute and issued a denial on this basis. Respondent's counsel asserts that the police report indicates that the Assignor was driving a taxi and had a passenger in the vehicle at the time of the accident. I disagree with counsel and cannot jump to such a conclusion, especially when the record contains a letter dated October 13, 2022 with letterhead from The Black Car Fund that states: Black Car Fund's investigation determined that the claimant was not acting in the course and scope of his employment at the time of the loss. Black Car Fund claim closed without awards made to or on behalf of the above-described claimant on 9/30/21. Furthermore, having reviewed all of the evidence, I find that Respondent has not met its very low burden of establishing that the injured party was in the course of his employment at the time that the accident occurred. Absent any other evidence, I cannot make the connection. Therefore, I find this basis of the denial unsubstantiated."

There is no new evidence to consider. I find that Respondent failed to establish its defense. Accordingly, I find in favor of Applicant and award \$2358.78 in satisfaction of this claim.

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	11/20/20 - 11/20/20	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	11/23/20 - 11/30/20	\$189.48	Awarded: \$189.41
	Brooklyn Medical Practice, PC	12/01/20 - 12/31/20	\$518.61	Awarded: \$518.61
	Brooklyn Medical Practice, PC	01/04/21 - 01/27/21	\$302.76	Awarded: \$302.76
	Brooklyn Medical Practice, PC	02/03/21 - 02/23/21	\$302.76	Awarded: \$302.76
	Brooklyn Medical Practice, PC	03/02/21 - 03/24/21	\$289.31	Awarded: \$289.31
	Brooklyn Medical Practice, PC	04/07/21 - 04/26/21	\$122.20	Awarded: \$122.20
	Brooklyn	05/26/21 -		Awarded:

	Medical Practice, PC	05/26/21	\$61.10	\$61.10
	Brooklyn Medical Practice, PC	06/22/21 - 06/22/21	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	07/02/21 - 07/11/21	\$160.93	Awarded: \$160.93
	Brooklyn Medical Practice, PC	09/24/21 - 09/24/21	\$127.29	Awarded: \$127.29
	Brooklyn Medical Practice, PC	10/14/21 - 10/14/21	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	11/24/21 - 11/30/21	\$67.28	Awarded: \$62.78
Total			\$2,358.78	Awarded: \$2,354.21

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/20/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest on the claim shall be calculated from September 20, 2024. Interest for all claims runs until the date that payment is made at two percent per month, simple interest on a pro rata basis using a thirty-day.

C. Attorney's Fees

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

Attorney fees shall be 20% of the total amount of first-party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration, subject to a maximum fee of \$1360.

- 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 NJ

SS :

County of Bergen

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

03/27/2025
(Dated)

Corinne Pascariu

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:
5a49b3f9f8477a8ca46dd823edae5125

Electronically Signed

Your name: Corinne Pascariu
Signed on: 03/27/2025