

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metrocare Medical, PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-24-1370-0794

Applicant's File No. MC6003

Insurer's Claim File No. 1140228

NAIC No. 16616

ARBITRATION AWARD

I, Anne Malone, 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 03/28/2025
Declared closed by the arbitrator on 03/28/2025

Adam Kass, Esq. from Alan D. Klaus Esq. participated virtually for the Applicant

Greg Etienne, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,944.51**, 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 30 year old EIP reported involvement in a motor vehicle accident on December 8, 2023; claimed related injury and underwent psychiatric treatment provided by the applicant from December 26, 2023 to January 6, 2023.

The applicant submitted bills for these medical services, payment of which was denied by the respondent on the grounds that there was no coverage for this claim/loss because the EIP's injuries did not arise from the use and operation of the vehicle insured by the respondent.

The issues to be determined at the hearing are:

Whether the assignor's injuries arose out of the use or operation of a motor vehicle.

Whether the respondent can sustain its denial.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

The claim was timely denied by respondent based on the testimony of examinations under oath of the EIP and the operator of the vehicle, which was allegedly involved in the accident. The EOR which accompanied the denial stated in pertinent part:

Entire claim is denied based on examination under oath conducted 03/11/2024. American Transit is asserting a lack of coverage, as it as established the "fact or founded belief" that the claimant s treated condition was unrelated to the motor vehicle accident

The applicant has the burden to establish *prima facie* that the assignor's injuries and the durable medical treatment provided hereunder arose out of the use or operation of a motor vehicle on December 8, 2023. See *Santo v. Government Employees Ins. Co.*, 31 A.D.3d 525, 819 N.Y.S. 279 (2d Dept. 2006); See also Insurance Law §5103[a][1.]

The applicant submitted the assignor's assignment of benefits form in which the assignor states, under warning of the penalties of filing a false report with an insurance company, that he was injured as a result of a motor vehicle accident that occurred on December 8, 2023 and thereby assigns his rights to benefits to the applicant.

In addition, the applicant submitted the transcript of the EUO of the EIP, which was held on March 11, 2024. At the EUO the EIP was asked to describe details regarding the happening of the accident and the injuries he claims resulted from it.

The EIP also responded through an interpreter to questions regarding the specific treatment he received including MRI studies and medical equipment which was provided to him.

I have reviewed the transcript and have determined that the evidence submitted in the instant matter is sufficient to establish that the injury claimed by the EIP was related to the motor vehicle accident on December 8, 2023.

Therefore, the respondent has failed to establish its coverage defense and its denial cannot be sustained.

Accordingly, the applicant is awarded \$1,944.51 in disposition of this claim.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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
	Metrocare Medical, PC	12/26/23 - 12/26/23	\$307.19	Awarded: \$307.19
	Metrocare Medical, PC	12/29/23 - 12/29/23	\$280.12	Awarded: \$280.12
	Metrocare Medical, PC	01/06/24 - 01/06/24	\$1,357.20	Awarded: \$1,357.20
Total			\$1,944.51	Awarded: \$1,944.51

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/16/2024 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." See 11 NYCRR §64-3.9(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. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. 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 was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

- C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20%

of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 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 CT
SS :
County of Fairfield

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

03/31/2025
(Dated)

Anne Malone

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:
1b215242515e188903059d8d9874b16d

Electronically Signed

Your name: Anne Malone
Signed on: 03/31/2025