

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tatay Ninong Physical Therapy PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-24-1370-7619

Applicant's File No. TN90011

Insurer's Claim File No. 1114697-03

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

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

Adam Kass, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,959.70**, 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 42 year old EIP reported involvement in a motor vehicle accident on June 2, 2022; claimed related injury and underwent physical therapy treatment provided by the applicant from August 3, 2022 to June 30, 2022.

The applicant submitted a claim for these medical services, payment for which was denied by respondent based on its finding that benefits are not payable as the EIP failed to comply with the policy terms by failing to appear for two scheduled independent medical examinations (IMEs.)

The issues to be determined at the hearing are:

Whether the respondent established that the EIP violated a condition precedent to coverage.

Whether the respondent's denial based on the EIP's failure to appear for an IME can be sustained.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the 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.

It is the respondent's burden to prove that the bill in question was properly denied. Under 11 NYCRR 65-1.1, which prescribes the No-Fault Mandatory Personal Injury Protection Endorsement which must be included in all owners policies of motor vehicle liability insurance issued in New York, the "Conditions" section of the endorsement contains a "Proof of Claim" provision (d) which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(d) "the eligible injured person shall submit to medical examination by physicians selected by or acceptable to, the Company when, and as often as, the Company may reasonably require."

Under the regulations claims practice provisions, Section 65-3.5(d) states in pertinent part that: "[a]ll examinations under oath and medical examinations requested by the insurer shall be held at a place and time reasonably convenient to the applicant and medical examinations shall be conducted in a facility properly equipped for the performance of the medical examination. The insurer shall inform the applicant at the time the examination is scheduled that the applicant will be reimbursed for any loss of earnings and reasonable transportation expenses incurred in complying with the request."

The respondent submitted an affidavit by someone with personal knowledge of the business practices and the file for this claim to provide evidence of proper scheduling and mailing letters for IMEs scheduled on December 9, 2022 and January 6, 2023. However, the affidavit was insufficient to establish that a timely letter was sent to the EIP to advise of scheduling an IME on January 6, 2023.

In addition, there was no submission by the physician/physicians who were scheduled to perform an IME to attest to the fact that the EIP failed to appear for two scheduled IMEs. The statement in the affidavit submitted by the respondent was insufficient to establish this contention.

Based upon the proof presented, I find that the respondent failed to establish that the EIP violated a condition precedent to coverage or that its denial can be sustained.

Accordingly, the applicant is awarded \$4,959.70 in disposition of this claim.

Any further issues raised 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
	Tatay Ninong Physical Therapy PC	08/03/22 - 08/31/22	\$1,179.35	Awarded: \$1,179.35
	Tatay Ninong Physical Therapy PC	09/02/22 - 09/30/22	\$1,188.11	Awarded: \$1,188.11
	Tatay Ninong Physical Therapy PC	10/06/22 - 10/27/22	\$756.07	Awarded: \$756.07
	Tatay Ninong Physical Therapy PC	11/10/22 - 11/18/22	\$540.05	Awarded: \$540.05
	Tatay Ninong Physical Therapy PC	12/01/22 - 12/14/22	\$216.02	Awarded: \$216.02
	Tatay Ninong Physical Therapy PC	01/05/23 - 01/11/23	\$216.02	Awarded: \$216.02
	Tatay Ninong Physical Therapy PC	03/17/23 - 03/24/23	\$324.03	Awarded: \$324.03
	Tatay Ninong Physical Therapy PC	05/02/23 - 05/03/23	\$216.02	Awarded: \$216.02
	Tatay Ninong Physical Therapy PC	06/28/23 - 06/30/23	\$324.03	Awarded: \$324.03
Total			\$4,959.70	Awarded: \$4,959.70

B. The insurer shall also compute and pay the applicant interest set forth below. 10/22/2024 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:
bf96700ff08b4707f8471a31fd0b9684

Electronically Signed

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