

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

New York Marine & General Insurance
Company
(Respondent)

AAA Case No. 17-24-1369-1866

Applicant's File No. AR24-25646

Insurer's Claim File No. EWR00199041

NAIC No.

ARBITRATION AWARD

I, Susan Haskell, 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 03/04/2025
Declared closed by the arbitrator on 03/04/2025

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

n/a from New York Marine & General Insurance Company failed to appear for the Respondent

2. The amount claimed in the Arbitration Request, **\$820.64**, 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

On September 16, 2020, EIP was a then-37-year-old male driver of a vehicle involved in a motor vehicle accident. Following the accident, EIP complained of headaches and injuries to the neck and back. EIP thereafter sought and received treatment including physical therapy provided on dates of service during the period running from February 12 to December 19, 2021.

Issue Presented

The issue in dispute is whether Applicant has made a prima facie showing of entitlement to payment.

4. Findings, Conclusions, and Basis Therefor

This award was decided on the basis of the documents submitted by Applicant. Respondent did not submit any materials to establish a defense in this proceeding. Respondent also failed to appear by videoconference at the scheduled time of the hearing. I contacted AAA's arbitrator support team and requested that AAA contact Respondent to determine whether Respondent had intended to appear in this case and another case scheduled for the same day, Case No. 17-24-1369-1870. I was informed that AAA had reached out to Respondent by telephone and email. Notwithstanding, Respondent failed to appear at the hearing.

Applicant must establish that it duly mailed its bills in order to make a prima facie showing of entitlement to payment. See Vista Surgical Supplies Inc. v. Clarendon Natl. Ins. Co., 35 Misc.3d 146(A) (App. Term 2d Dept. 2d, 11th & 13th Jud. Dists. 2012) (affirming judgment for carrier where Civil Court determined that the provider did not prove mailing of its bill).

Here, Applicant has submitted post office stamped mailing ledgers as proof that it duly sent its bills. At the hearing, Applicant demonstrated that the address on the proof of mailing matches the address on the bills. I find that the ledgers are sufficient to shift the burden to Respondent to establish nonreceipt. Respondent has not submitted evidence in this case. Respondent also did not appear at the time of the hearing. I find that a preponderance of the evidence is sufficient to establish that Applicant duly mailed the following bills on the following dates:

The bill for dates of service February 12 to 24, 2021 [\$194.57] on March 12, 2021.

The bill for dates of service April 6 to 20, 2021 [\$183.30] on May 12, 2021.

The bill for dates of service June 1 to 30, 2021 [\$249.49] on July 12, 2021.

The bill for date of service October 12, 2021 [\$127.29] on November 9, 2021.

The bill for date of service December 19, 2021 [\$127.29] on January 11, 2021.

Respondent has not submitted a defense in this arbitration and did not appear at the hearing. Respondent therefore has not refuted receipt of any of the bills or raised any defense to payment on the record before me herein. That said, Applicant's AR-1 acknowledges \$30.65 payments for each of dates of service October 12, 2021 and December 19, 2021, reducing the amount claimed for each of these dates of service to \$96.64. Applicant's submission also contains an NF-10 showing partial payment for the October 12, 2021 date of service and denial of the balance on January 10, 2022, though

the submission does not include any defense or evidence in support of a reduction. There is no NF-10 within the submissions related to the December 19, 2021 date of service.

Based upon the foregoing, I find that Applicant has made a prima facie showing of entitlement to payment and Respondent has not asserted any defense herein. I hereby award Applicant's 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	02/12/21 - 02/24/21	\$194.57	Awarded: \$194.57
	Brooklyn Medical Practice, PC	04/06/21 - 04/20/21	\$183.30	Awarded: \$183.30
	Brooklyn Medical Practice, PC	06/01/21 - 06/30/21	\$249.49	Awarded: \$249.49
	Brooklyn Medical Practice, PC	10/12/21 - 10/12/21	\$96.64	Awarded: \$96.64
	Brooklyn Medical Practice, PC	12/19/21 - 12/19/21	\$96.64	Awarded: \$96.64
Total			\$820.64	Awarded: \$820.64

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/10/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

On the record before me herein, there is no proof that Respondent tolled the bills or paid or denied the bills other than the bill for dates of service October 12, 2021 and December 19, 2021. Respondent was required to pay or deny within thirty days of receipt of each bill. See 11 NYCRR 65-3.8(a)(1); 11 NYCRR 65-3.9(a). Under 11 NYCRR 65-3.9(a) interest shall run on all overdue benefits at a rate of two percent per month calculated on a pro-rata basis using a 30-day month.

As here the bills were mailed to a different state, presumed receipt is six days after mailing. See C.P.L.R. 2103(b).

Based upon the foregoing, I find that payment for date of service February 12 to 24, 2021 in the amount of \$194.57 became overdue 36 days from March 12, 2021, i.e. April 16, 2021. Interest therefore shall run from April 16, 2021 to the date payment is made.

I find that payment for date of service April 6 to 20, 2021 in the amount of \$183.30 became overdue 36 days from May 12, 2021, i.e. June 16, 2021. Interest therefore shall run from June 16, 2021 to the date payment is made.

I find that payment for date of service June 1 to 30, 2021 in the amount of \$249.49 became overdue 36 days from July 12, 2021, i.e. August 16, 2021. Interest therefore shall run from August 16, 2021 to the date payment is made.

I find that payment for balance of the bill for date of service December 19, 2021 [\$96.64, the amount claimed herein] became overdue 36 days from January 11, 2021, i.e. February 15, 2022. Interest therefore shall run from February 15, 2022 to the date payment is made. I reiterate in connection with the award for this date of service that while the AR-1 does credit a partial payment, the submissions do not contain any evidence of to establish that the period to pay or deny was tolled or that a denial was interposed.

With regard to the bill for date of service October 12, 2021, the submissions include a Form NF-10 showing receipt of the bill on November 12, 2021. The bill became overdue 30 days from November 12, 2021, i.e. December 12, 2021. The denial is dated January 19, 2022. The arbitration was commenced on October 10, 2024. As such, while the denial and partial payment were untimely, interest will be subject to tolling under 11 NYCRR 65-3.9(c). See OGC Opinion No. 10-09-05. I hereby award interest on the full amount of the bill [\$127.29] for the period that the payment and denial were overdue, i.e., from December 12, 2021 to January 19, 2022. I award interest on the \$96.64 balance of the bill from the date of the filing, Oct 10, 2024, to the date payment is made.

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 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 NJ

SS :

County of Essex

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

04/03/2025
(Dated)

Susan Haskel

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:

11401d1f2a7b43b999575aa0e317d945

Electronically Signed

Your name: Susan Haskel
Signed on: 04/03/2025