

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. 17-24-1372-6906

Applicant's File No. AR24-25975

Insurer's Claim File No. 1128761

NAIC No. 16616

ARBITRATION AWARD

I, Marcelo Vera, 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 04/23/2025
Declared closed by the arbitrator on 04/23/2025

Alec Beynenson, Esq from The Beynenson Law Firm, PC 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, **\$3,071.60**, 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 arbitration arises out of treatment to the EIP, MR, a male, involved in a motor vehicle accident on March 31, 2023. Applicant seeks reimbursement in the amount of \$3071.60 for services provided on April 11, 2023 to April 09, 2024. Respondent has failed to submit any documents for this hearing. Request to continue hearing in order to upload evidence were not granted and the hearing was conducted as scheduled.

4. Findings, Conclusions, and Basis Therefor

My decision is based on the arguments of representatives for each party as well as those documents contained in the electronic file maintained by the American Arbitration Association. I have reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

It is Applicant's *prima facie* obligation to establish its entitlement to payment for each service for which reimbursement is sought. It is well settled that a health care provider establishes its *prima facie* entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see *Insurance Law* § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]). Herein, applicant established its *prima facie* entitlement to first party no-fault benefits by proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits was overdue.

Applicant has uploaded proof of mail, U.S. Postal service form ledgers, all ledgers include the EIP's name and the Respondent's address date of service and amount in dispute.

Applicant argues Respondent is precluded from offering any defenses since Respondent has failed to upload any documentation to the MODRIA system for review. It is undisputed that, by correspondence dated November 12, 2024, a representative of the American Arbitration Association wrote an "initiation letter" that was sent to both parties herein. The document, in pertinent part, indicated that, "in accordance with the current regulations, the Respondent (a/k/a the insurance company) must provide their position in writing along with supporting documentation, and provide a copy to Applicant party by December 12, 2024. Documents received after this date will be marked 'late submission' and may not be considered by the Arbitrator". Despite this clear deadline by which documents were to be submitted, Respondent did not submit any documentary evidence. Furthermore, in light of this omission, "Reminder Letters" were sent to Respondent. These letters were dated December 2, 2024 December 13, 2024, December 30, 2024 and January 13, 2025. Each letter indicated that Respondent's supporting documentation was due by December 12, 2024, and that the documents were "past due". The letters further urged Respondent to review the Electronic Case Folder ("ECF") to ensure that it reflected its "entire submitted case file". Further on December 13, 2024 a time extension was provided for Respondent to upload documents on or before January 13, 2025. There is no dispute that Respondent did, indeed, receive these notices in a timely manner, and no evidence to reflect that any documents were thereafter submitted in a timely fashion.

In addition to the foregoing, the first amendment to *Regulation 68-D (11 NYCRR §65-4) of the Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act*, in relevant part, provides for the submission of documents as follows:

(3) *Submission of documents:*

The Applicant shall submit all documents supporting the applicant's position along with their request for arbitrations. All such documents shall also be simultaneously submitted to the respondent. Following this original submission of documents, no additional documents may be submitted by the applicant other than bills or claims for ongoing benefits. The designated organization shall, no later than five business days after receipt of the arbitration request, advise the respondent of such receipt. The respondent shall, within 30 calendar days after the mailing of such advice, provide all documents supporting its position on the disputed matter. Such documents shall be submitted to the applicant at the same time. The respondent may, in writing, request that the designated organization provide an additional 30 calendar days to respond based upon reasonable circumstances that prevent it from complying. The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late". Any additional written submissions may be made only at the request or with the approval of the arbitrator. The provisions of this paragraph shall take effect with all arbitrations filed on and after March 1, 2002.

In the instant matter, the Respondent has failed to submit any documents pursuant to the controlling Regulations. Without Submissions Respondent has no defense for this claim.

Accordingly, in light of the foregoing, based on the arguments of counsel and after a thorough review and consideration of all submissions, I find in favor of the Applicant and grant Applicant's claim in the entirety.

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	04/11/23 - 04/11/23	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	04/12/23 - 04/24/23	\$128.38	Awarded: \$128.38
	Brooklyn Medical Practice, PC	05/19/23 - 05/19/23	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	06/02/23 - 06/28/23	\$370.04	Awarded: \$370.04
	Brooklyn Medical Practice, PC	07/03/23 - 07/26/23	\$336.40	Awarded: \$336.40
	Brooklyn Medical Practice, PC	08/01/23 - 08/31/23	\$362.77	Awarded: \$362.77
	Brooklyn Medical Practice, PC	09/01/23 - 09/22/23	\$168.20	Awarded: \$168.20
	Brooklyn Medical Practice, PC	09/07/23 - 09/07/23	\$964.74	Awarded: \$964.74
	Brooklyn Medical Practice, PC	09/07/23 - 09/07/23	\$194.88	Awarded: \$194.88
	Brooklyn Medical Practice, PC	10/01/23 - 10/26/23	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	11/17/23 - 11/17/23	\$33.64	Awarded: \$33.64

	Brooklyn Medical Practice, PC	12/11/23 - 12/17/23	\$160.93	Awarded: \$160.93
	Brooklyn Medical Practice, PC	01/25/24 - 01/25/24	\$33.64	Awarded: \$33.64
	Brooklyn Medical Practice, PC	04/09/24 - 04/09/24	\$33.64	Awarded: \$33.64
Total			\$3,071.60	Awarded: \$3,071.60

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/04/2024 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 (2009).

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) 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 Nassau

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

05/16/2025

(Dated)

Marcelo Vera

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:
9f3a161ab180efd0c0533742e1e752e2

Electronically Signed

Your name: Marcelo Vera
Signed on: 05/16/2025