

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

Federal Insurance Company
(Respondent)

AAA Case No. 17-24-1371-8285
Applicant's File No. AR24-25969
Insurer's Claim File No. 006537016162AP01
NAIC No.

ARBITRATION AWARD

I, Robyn McAllister, 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 03/18/2025, 05/22/2025
Declared closed by the arbitrator on 05/22/2025

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

Krista Jackson, TPA Claims Representative from Gallagher Bassett Services, Inc. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,962.95**, 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

Whether Applicant is entitled to reimbursement for performing office visits and physical therapy treatments for Assignor (FJR), a 27 year-old male scooter operator, in connection with treatment of injuries sustained in a motor vehicle accident on August 13, 2020, where Respondent asserted Assignor was not an eligible injured person.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1962.95 for performing office visits and physical therapy treatments from December 1, 2021 to September 20, 2022 for Assignor (FJR), a 27 year-old male scooter operator, in connection with treatment of injuries sustained in a motor vehicle accident on August 13, 2020. Respondent asserted that Assignor was not an eligible injured person not entitled to no-fault benefits.

This decision is based on the oral arguments of counsel or other representative at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Applicant submitted proof of mailing dated March 2022 and July 22, 2022. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015).

Respondent did not issue timely denials of Respondent's bill. Nonetheless, it is well settled that the issue of lack of coverage may be raised at any time. *See Central General Hospital v. Chubb Group of Ins. Cos.*, 90 N.Y.2d 195 (1997); *St. Vincent's Hospital & Medical Center v. Allstate Ins. Co.*, 69 A.D.3d 923 (2d Dept. 2010).

At the hearing, Respondent argued that Applicant was not entitled to reimbursement for the services provided since Assignor was not an eligible injured person. Specifically, Respondent's denial letter to Applicant's attorney, dated April 2, 2025, after the request for the instant arbitration was filed, stated as follows:

Federal issued Business Auto Policy Number 54303123 ("the policy") to Ahern for the period effective 05/10/2020 to 05/10/2021. Gallagher Bassett is the third-party administrator for Ahern. The Policy provides PIP coverage for covered autos only if the vehicle is principally licensed or garaged requires no-fault benefits and prohibits rejection.

Per New York Mandatory Personal Injury Protection Endorsement, "The Company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions, or Canada."

"Eligible Injured Person" is defined in the policy as:

"(a) The named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle; (b) The named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle; (c) Any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not

occupying another motor vehicle; or (d) Any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York State while not occupying another motor vehicle."

"Motor vehicle" is defined in the policy as "means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;"

Analysis

The vehicle you were operating qualifies as a covered auto under the Policy. The auto involved in the accident is both registered and principally garaged in New York. [Assignor] was operating a motor scooter at the time of the accident. It's our understanding that the motor scooter was being operating on the public highway and gas powered and therefore qualifies as a motor vehicle. Since [Assignor] was already occupying a motor vehicle, [Assignor] does not meet the definition of an eligible injured person and therefore is not entitled to PIP coverage under this policy.

Therefore, PIP benefits are not available for this incident.

In addition, Respondent submitted a photo of the Yamaha scooter, photos of the insured pick-up truck, insured's incident report, police accident report and statement by insured regarding police report.

After consideration of the evidence presented, I am persuaded by Respondent's assertion that Assignor is not an eligible injured person as defined by 11 NYCRR 65-1.1. The photo of the scooter operated by Assignor depicted a large Yamaha bike that although it had space for a license plate on the rear, did not have a license plate. Based on the size of the bike, alone, the scooter would clearly either fall into the category of a motor vehicle or a Class A or B motorcycle. Thus, since Assignor was an occupant of that vehicle, he is not an eligible injured person entitled to benefits under the adverse vehicle's [Respondent's insured's] policy.

Accordingly, Applicant's claim is denied in its 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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Westchester

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

05/26/2025

(Dated)

Robyn McAllister

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:
a587a331258c2e05ac05f1a1dc81d670

Electronically Signed

Your name: Robyn McAllister
Signed on: 05/26/2025