

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. 17-24-1374-9926

Applicant's File No. AR24-26123

Insurer's Claim File No. 1122793-03

NAIC No. 16616

ARBITRATION AWARD

I, Keith Tola, 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 05/06/2025
Declared closed by the arbitrator on 05/06/2025

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

Samara Halpern, Esq. from American Transit Insurance Company 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

This case stems from a New York motor vehicle accident which occurred on November 21, 2022, wherein the EIP allegedly sustained injuries. Applicant seeks compensation for physical therapy services, from October 2, 2023 through July 25, 2024.

On February 22, 2024, at the request of respondent, the EIP was examined by IME doctor, Aruna Seneviratne, M.D. That IME resulting in termination of benefits effective March 6, 2024. From March 6, 2024 through July 25, 2024, all claims herein were denied for lack of medical necessity, based on that IME.

All claims prior to the IME cut-off date, were neither paid nor denied. Rather, respondent maintains those claims are in a delayed status pending verification.

4. Findings, Conclusions, and Basis Therefor

This Award was issued upon consideration of the parties' arguments and upon review of the relevant evidence contained within the ADR Center files.

Issue #1: Verification

At issue are pre-IME cut-off dates of service, from October 2, 2023 through March 6, 2024, in the total amount of \$1364.70. The record contains numerous initial and follow-up verification requests, all appear on their face to be timely issued. Respondent has also provided an affidavit from the handling claims representative, Marc Attias, attesting to the fact he personally received the bills in question and issued all initial and follow-up verification requests. In fact, Mr. Attias narrowed the issue here, confirming that he had written to applicant provider, the EIP and the EIP's counsel, to advise that the only remaining verification is respondent's request for hospital records from St. Barnabas Hospital. Mr. Attias noted he personally mailed verification request to St. Barnabas Hospital on January 26, 2023 and March 2, 2023.

Determination

If the insurer can demonstrate that the initial verification request and follow-up verification request were timely issued, and that no response was received, the matter will be deemed premature and not ripe for adjudication. *See Mount Sinai Hosp. v. Chubb Group of Ins. Co.*, 43 AD3d 889, 2007 NY Slip Op 06650 (App. Div., 2nd Dept., 2007).

See also, *Island Life Chiropractic, P.C., v. Travelers Ins. Co.*, 2019 NY Slip Op 51273(U); 64 Misc. 3d 143(A); 117 N.Y.S.3d 428; 2019 WL 3756860, wherein the Court confirmed that where a no-fault insurer is relying on the defense that an action is premature because verification is outstanding, it is the defendant insurer's prima facie burden at trial to demonstrate (1) that verification requests were timely mailed and (2) that the defendant did not receive the requested verification.

Here, it is clear that no verification is sought herein by respondent directly from this applicant provider, or from the EIP. Indeed, Mr. Attias confirmed in his affidavit that respondent has yet to receive medical records requested directly from St. Barnabas Hospital. At the hearing, counsel for applicant took issue with the affidavit of Mr. Attias, noting it was not dated or notarized. Of particular importance, applicant argued that since Mr. Attias only indicated that "to date" the St. Barnabas Hospital records have not been received, his failure to date and/or notarize his affidavit rendered it unclear when "to date" was - that is, when he last checked respondent's files/records to ascertain whether the records respondent sought were still outstanding. I agree, and while I find the affidavit of Mr. Attias possesses indicia of reliability in some additional instances,

such as the fact he personally received the bills in question and issued verification requests, with the only outstanding verification being the records from St. Barnabus Hospital, it lacks similar reliability when attempting to ascertain whether those records were received from the date this arbitration was filed, November 19, 2024, to the date Mr. Attias signed the affidavit in preparation of this arbitration, about six months later.

In view of the foregoing, I agree with applicant's position and find that respondent cannot benefit from a continuation of the tolling of the statutory period in which to pay or deny this portion of applicant's claims.

This portion of the applicant's claims is granted.

See, 17-23-1284-0635, Arb. Summa (9/29/23), "Respondent fails to submit evidence to establish that verification is still outstanding, and if so, what is still outstanding. Respondent submits a draft of an affidavit ... However, this document is ... undated. With regard to the issue of verification requests, the insurer bears the burden of proving that they remain outstanding. *Right Aid Medical Supply, Corp. v. State Farm Mutual Auto. Ins. Co.*, 56 Misc.3d 681 (Civ. Ct. Kings Co. 2017)."

See, 17-20-1173-2986, Arb. Vera (5/23/22) "Respondent relies on the affidavit of Marc Attias, No Fault examiner. This Arbitrator notes the affidavit is ... undated, there is no other proof of mailing for the verification letters included in the Respondent's evidence."

Issue #2: Medical Necessity

IME - Dr. Seneviratne

The EIP presented to Dr. Seneviratne on February 22, 2024, with complaints of pain to the neck radiating to the arms, and low back pain radiating to the left knee. She also complained of pain to the left shoulder and left side. Cervical examination revealed minimal tenderness to palpation over the paraspinals and trapezius, with no evidence of spasm. Cervical range of motion was normal at all planes. Thoracic exam was normal in every respect. Lumbar exam revealed no evidence of tenderness or spasms, and lumbar range of motion was normal throughout. Neurologic examination of the extremities was unremarkable. Every other body part/region examined yielded normal/negative results. The EIP was diagnosed with fully resolved sprains/strains. Dr. Seneviratne concluded there was no evidence of an orthopedic disability and no medical necessity for additional services.

Respondent's Burden

Based on the opinions of Dr. Seneviratne, respondent satisfied its burden. The presumption of medical necessity is removed and the burden shifts to applicant to prove medical necessity by a fair preponderance of the evidence.

Applicant's Evidence

Applicant submitted its own re-evaluation reports, summarizing examinations prior to, and after, the IME. See reports, dated November 22, 2023; January 10, 2024; and May 2, 2024. While those records are somewhat difficult to read, they do provide some proof of continued complaints consistent with the complaints set forth by the EIP at the time of the IME, together with continued positive clinical findings, including marked spinal limitations of range of motion. These records, which I find sufficiently contemporaneous with the IME, establish the EIP had not reached maximum medical benefit and/or pre-accident status as of the date of the IME.

Determination

For the foregoing reasons, I find applicant has proven medical necessity for the post-IME cut-off services at issue, by a fair preponderance of the evidence, as required.

This portion of the applicant's claim is granted.

NOTE: The respondent's claims examiner, Mr. Attias, also indicated within his undated affidavit that respondent did not receive a bill for dates of service, June 13, 2024 through June 27, 2024. However, applicant has submitted sufficient proof of mailing that bill on July 11, 2024.

Summary

Applicant's claim is granted 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Brooklyn Medical Practice, PC	10/02/23 - 10/31/23	\$329.13	Awarded: \$329.13
	Brooklyn Medical Practice, PC	11/03/23 - 11/29/23	\$235.48	Awarded: \$235.48
	Brooklyn Medical Practice, PC	12/01/23 - 12/29/23	\$269.12	Awarded: \$269.12
	Brooklyn Medical Practice, PC	01/03/24 - 01/31/24	\$362.77	Awarded: \$362.77
	Brooklyn Medical Practice, PC	03/04/24 - 03/28/24	\$168.20	Awarded: \$168.20
	Brooklyn Medical Practice, PC	04/05/24 - 04/21/24	\$67.28	Awarded: \$67.28
	Brooklyn Medical Practice, PC	05/02/24 - 05/29/24	\$261.85	Awarded: \$261.85
	Brooklyn Medical Practice, PC	06/02/24 - 06/27/24	\$168.20	Awarded: \$168.20
	Brooklyn Medical Practice, PC	07/07/24 - 07/25/24	\$100.92	Awarded: \$100.92
Total			\$1,962.95	Awarded: \$1,962.95

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/19/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant commenced arbitration by filing on 11/19/24. Applicant filed beyond 30 days of receipt of the denial. As such, Respondent shall pay the applicant interest computed from the date of filing, 11/19/24, at the rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR § 65-3.9(e).

C. Attorney's Fees

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

The insurer shall also pay the applicant for attorney's fees as set forth below Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR Section 65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR Section 65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850.00" Id. The minimum attorney fee that shall be awarded is \$60.00. 11 NYCRR Section 65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR Section 65-4.6(i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$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, Keith Tola, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

05/28/2025
(Dated)

Keith Tola

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:
9d255784fe33a648f0b8f7334813c2b6

Electronically Signed

Your name: Keith Tola
Signed on: 05/28/2025