

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Urgent Physical Therapy PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-24-1374-6947

Applicant's File No. 16932

Insurer's Claim File No. 1144479-02

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 05/27/2025
Declared closed by the arbitrator on 05/27/2025

Edward Blinder, Esq. from Law Firm of Edward Blinder, PLLC participated virtually for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,005.55**, 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 33 year old EIP reported involvement in a motor vehicle accident on February 28, 2024; claimed related injury and underwent physical therapy treatment provided by the applicant from March 1, 2024 to August 28, 2024.

The applicant claims to have submitted a claim for these medical services. It is the respondent's contention that the bills for services rendered from March 1, 2024 to May 29, 2024 were not received.

The bills for dates of service June 7, 2024 to July 31, 2024 were timely denied by the respondent based on the EUO testimony of the EIP on August 13, 2024

which established that the injuries sustained by the EIP were unrelated to the subject accident.

The bill for dates of service June 7, 2024 to June 18, 2024 was also denied on the grounds that it was submitted more than 45 days from the date of service.

The bill for date of service August 28, 2024 was denied by the respondent based on the applicant's failure to attend an EUO.

The issues to be determined at the hearing are:

Whether the applicant sustained its burden to establish a *prima facie* entitlement to no-fault benefits for services rendered from June 7, 2024 to July 31, 2024.

Whether the respondent established that the treatment rendered to the EIP from June 7, 2024 to July 31, 2024 was not causally related to the subject accident.

Whether the respondent established its 45 day defense for services rendered from June 7, 2024 to June 18, 2024.

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

Whether the respondent's denial based on the applicant's failure to appear for an EUO 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.

Applicant's *prima facie* case of entitlement to no-fault benefits

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the untimely submission of the bill/bills at issue if such defense is not raised in a timely denial. See New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that late submission of the bill/bills will be excused where the applicant can provide a reasonable justification of the failure to timely submit the bill/bills. 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007.)

Non-receipt of bills for dates of service March 1, 2024 to May 29, 2024

It is well settled that an applicant establishes its *prima facie* entitlement to no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

The applicant has met its initial burden to establish that the "prescribed statutory billing forms had been mailed and received by the respondent" by submitting sufficient evidence of timely mailing of the bills at issue.

Based on the submissions, the applicant established with evidentiary proof its *prima facie* showing that the bills at issue were timely mailed.

Under these circumstances, the applicant has established its *prima facie* entitlement to reimbursement for the bills for dates of service March 1, 2024 to May 29, 2024.

The respondent contends that it did not receive any of the bills for these dates of service and the submissions did not include denials for them.

The respondent did not submit an affidavit by anyone with personal knowledge of the issue to establish that the bills at issue were not received.

In addition, the applicant submitted sufficient proof of timely mailing of these bills.

Based on the foregoing, the respondent has failed to establish that the bills for services rendered from March 1, 2024 to May 29, 2024 were not received.

Therefore, the applicant is awarded \$2,031.45 for dates of service March 1, 2024 to May 29, 2024.

45 day defense for dates of service June 7, 2024 to June 18, 2018

The respondent also denied reimbursement for dates of service June 7, 2024 to June 18, 2024. The bill at issue was dated July 1, 2024. According to the NF-10 the bill was received on that date and the denial, which contained the requisite "reasonable justification" language was dated August 28, 2024.

Since this bill was late on its face, and the denial did not establish that it was submitted more than 45 days after the dates of service, the respondent did not establish its 45 day defense.

The bill for dates of service June 7, 2024 to June 18, 2024 was also denied for a lack of causation between the subject accident and the injuries claimed from these dates of service.

Therefore, this claim will be determined with the other dates of service for which a lack of causation was the basis of the denials.

Lack of causation between the subject accident and the injuries claimed for dates of service June 7, 2024 to July 31, 2024.

The Explanation of Benefits, which accompanied the respondent's denial of the bill for services rendered from June 6, 2024 to July 31, 2024, states in pertinent part:

ENTIRE CLAIM IS DENIED BASED UPON EXAMINATION

UNDER OATH CONDUCTED ON 08/13/24. AMERICAN

TRANSIT IS ASSERTING A LACK OF COVERAGE, AS IT

HAS ESTABLISHED THE "FACT OR FOUNDED BELIEF"

THAT THE CLAIMANT'S TREATED CONDITION WAS

UNRELATED TO THE MOTOR VEHICLE ACCIDENT.

THE ELIGIBLE INJURED PERSON FAILED TO

ESTABLISH THAT THE ALLEGED INJURIES WERE

CAUSALLY RELATED TO THE MOTOR VEHICLE ACCIDENT.

I have reviewed the EUO transcript and do not find any evidence to support the lack of causation defense asserted by the respondent.

Based on the foregoing, the respondent did not establish this defense.

Therefore, the applicant is awarded a total of 916.80 for services rendered from June 7, 2024 to July 31, 2024.

No show EUO of the applicant - date of service August 28, 2024

The Explanation of Benefits which accompanied the denial for services rendered on August 28, 2024 was based on the applicant's failure to comply with the request for an examination under oath scheduled on August 19, 2024 and September 16, 2024.

It is the respondent's burden to prove that the bills in question were 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 which states in pertinent part that "Upon request by the Company, the eligible injured person or that person's assignee or representative shall:(b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same..."

If the respondent requires an EUO of the applicant it has 15 business days after receipt of proof of claim in which to send correspondence requesting the examination under oath. If the party fails to attend, within 10 calendar days of the no-show the insurer must contact the party from whom the EUO is requested to give the party a second opportunity to attend.

If the party fails to appear at the rescheduled EUO, an insurer may issue a denial of pending claims based upon the failure to meet the condition for coverage in not submitting to the requested EUO, as required under the prescribed endorsement. There is no requirement in the regulation that the denial must state the specific reason(s) why the insurer required the EUO.

Based on the denial of this bill, the respondent alleges to have attempted to schedule the EUO of the applicant on August 19, 2024 and September 16, 2024 and that a witness on behalf of the applicant failed to appear.

However, there is no evidence in the submissions of letters sent to the applicant or its attorneys requesting an EUO of the applicant, no proof of mailing, or evidence of any kind related to an EUO of the applicant.

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

Therefore, the applicant is awarded \$57.30 for services rendered on August 28, 2024.

Accordingly, the applicant is awarded a total of \$3,005.55 in disposition of this claim.

Any further issues submitted 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
	Urgent Physical Therapy PC	03/01/24 - 03/06/24	\$484.35	Awarded: \$484.35
	Urgent Physical Therapy PC	03/11/24 - 03/22/24	\$343.80	Awarded: \$343.80
	Urgent Physical Therapy PC	03/26/24 - 04/12/24	\$515.70	Awarded: \$515.70

	Urgent Physical Therapy PC	04/18/24 - 04/23/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	04/25/24 - 05/01/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	05/06/24 - 05/17/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	05/21/24 - 05/29/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	06/07/24 - 06/18/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	06/20/24 - 06/26/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	06/28/24 - 07/08/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	07/11/24 - 07/22/24	\$171.90	Awarded: \$171.90
	Urgent Physical Therapy PC	07/24/24 - 07/31/24	\$229.20	Awarded: \$229.20
	Urgent Physical Therapy PC	08/28/24 - 08/28/24	\$57.30	Awarded: \$57.30
Total			\$3,005.55	Awarded: \$3,005.55

B. The insurer shall also compute and pay the applicant interest set forth below. 11/18/2024 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.

06/24/2025
(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:
23440dffa36b287a5eb233308154477

Electronically Signed

Your name: Anne Malone
Signed on: 06/24/2025