

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1377-9084

Applicant's File No. AR24-26259

Insurer's Claim File No. 3213M822R

NAIC No. 25178

ARBITRATION AWARD

I, Richard Kokel, 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 06/04/2025
Declared closed by the arbitrator on 06/04/2025

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

Joseph Licata from Rossillo & Licata LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,319.91**, 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 issue is whether the EIP, a 22-year-old male, violated a condition precedent to coverage by failing to attend Independent Medical Examinations scheduled for November 1, 2022 and November 22, 2022.

4. Findings, Conclusions, and Basis Therefor

The Applicant commenced this proceeding to recover assigned first party No-Fault benefits with respect to the cost of physical medicine modalities of treatment rendered

from December 8, 2022 to May 16, 2023. The services were needed to treat injuries the EIP sustained in an October 27, 2020 motor vehicle accident.

The Applicant presented their billing claim forms to the Respondent. The overall claim consists of seven (7) bills. The Respondent, upon receipt, denied each in a timely fashion (in accordance with 11 NYCRR 65-3.8) on the grounds that the EIP violated conditions precedent to coverage under the terms of the insurance policy. The violation was due to the EIP's failure to attend Independent Medical Examinations scheduled for November 1, 2022 and November 22, 2022. The Examinations were to be conducted by Dr. Passick, M.D.

The below noted decision is based upon my review of the evidentiary record as well as the oral argument of the representatives present at the hearing. All evidence submitted by the Applicant and the Respondent is contained within the Case Management system (Modria) maintained by the American Arbitration Association. Any issue(s) that may be contained in the evidentiary record that was not specifically raised at the time of the hearing, is considered to be moot and/or waived by the undersigned Arbitrator.

The Applicant, with one exception, established their *prima facie* showing of their entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received by the Respondent, and that payment of No-Fault benefits were overdue (Sound Shore Med. Ctr. v. New York Cent. Mut. Fire Ins. Co., 2013 NY Slip Op 02390 (App Div 2d Dept., April 10, 2013)).

The exception is in regard to one bill in the amount of \$228.21, which refers to dates of service from May 5 to May 16, 2023. The Respondent did not pay or deny this portion of the claim. Instead, they argued that it was not received. As a general rule of evidence, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee (see Matter of Government Empls. Ins. Co. v Morris, 95 A.D.3d 887, 888, 942 N.Y.S.2d 642, 644 (2d Dept 2012)). This presumption may be created by the production of an affidavit of mailing; a certificate of mailing; and/or a mailing ledger signed and date-stamped by a U.S. Postal Service employee United States Postal service employee (see Residential Holding Corp. v Scottsdale Ins. Co., 286 A.D.2d 679, 680, 729 N.Y.S.2d 776, 778 (2d Dept. 2001)). The Applicant stated that they mailed the bill to the Respondent. They submitted a mailing log bearing the name of the EIP, the date of service and the amount of the bill (\$228.21). The log, however, is illegible with respect to a date that the documents listed on the log were actually mailed. In view thereof, I find that the Applicant's *prima facie* entitlement to recover the cost of the May 5 to May 16, 2023 service was not established. This portion of the claim is denied.

Returning to the defense regarding the violation of a condition precedent to coverage, the Respondent argued that the EIP failed to attend the Independent Medical Examinations scheduled for November 1, 2022 and November 22, 2022.

An EIP's appearance at an Independent Medical Examination, when requested, amounts to a condition precedent to coverage under the policy of insurance (see Stephen Fogel

Psychological, P.C. v Progressive Cas. Ins. Co., 2006 NY Slip Op 09604, App. Div. 2d Dept. (2006). When a failure to attend a requested Independent Medical Examination occurs, an insurer may deny a claim retroactively to the date of the loss (see Fogel, supra).

In order to establish a defense predicated on the breach of a condition precedent to coverage, to wit, the failure to appear for an Independent Medical Examination ("IME") an insurer must prove that the IME notices (scheduling letters) were mailed and that there was a failure to appear (see A.B. Medical Services, PLLC et al v. American Transit Ins. Co., 901 N.Y.S.2d 904, 25 Misc. 3d 128(A)(App. Term, 2d Dept. 2009) & Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.3d 720827 N.Y.S.2d 217 (2d Dept. 2006).

Herein, the Respondent submitted credible proof that the scheduling letters were properly mailed to the EIP and his attorneys. However, the record is bereft of any proof with respect to the EIP's non-appearance. There is no document, letter or Affirmation that references the EIP's failure to attend both Examinations. Also, there is no document from Dr. Passick that states that the EIP did not attend the Examinations.

I view thereof, I find the Respondent's evidence insufficient to sustain their defense regarding the EIP's violation of a condition precedent to coverage. The Applicant's claim is thereby awarded, but for the one bill identified above.

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	12/08/22 - 12/08/22	\$149.78	Awarded: \$149.78
	Brooklyn Medical Practice, PC	12/16/22 - 12/30/22	\$269.12	Awarded: \$269.12
	Brooklyn Medical Practice, PC	01/03/23 - 01/31/23	\$370.04	Awarded: \$370.04
	Brooklyn Medical Practice, PC	02/06/23 - 02/22/23	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	03/03/23 - 03/14/23	\$134.56	Awarded: \$134.56
	Brooklyn Medical Practice, PC	04/24/23 - 04/26/23	\$67.28	Awarded: \$67.28
	Brooklyn Medical Practice, PC	05/05/23 - 05/16/23	\$228.21	Denied
Total			\$1,319.91	Awarded: \$1,091.70

B. The insurer shall also compute and pay the applicant interest set forth below. 12/17/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from December 17, 2024, the date the request for arbitration was filed with the American Arbitration Association, at a rate of 2% per month, calculated on a pro rata basis using a 30 day month, 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

An attorney's fee of 20% shall be paid on the sum total of the awarded claim plus interest, subject to a maximum of \$1,360 (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 NY

SS :

County of New York

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

06/25/2025
(Dated)

Richard Kokel

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:

3789fcfb0a8f9fdc20d8d0b7c073f155

Electronically Signed

Your name: Richard Kokel
Signed on: 06/25/2025