

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Leviathan Wellness PLLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-25-1430-4037

Applicant's File No. BT25â314529

Insurer's Claim File No. 1161967â01

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 07/24/2026
Declared closed by the arbitrator on 07/24/2026

Heather Landeras, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Megan Harris, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$163.00**, 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 50 year old EIP reported involvement in a motor vehicle accident on December 12, 2024; claimed related injury and underwent an initial evaluation by a PA provided by the applicant on May 19, 2025.

The applicant submitted a claim for these chiropractic services, payment of which was denied on the grounds that the EIP is eligible for Workers' Compensation benefits.

The issue to be determined at the hearing is whether the applicant has standing to proceed with this case in this forum.

4. Findings, Conclusions, and Basis Therefor

This 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.

The respondent denied payment for the aforementioned medical services on the ground that the EIP is eligible for Workers' Compensation benefits as he was in the course of employment at the time of the accident.

The police report indicates that the EIP was operating a livery vehicle without a passenger when he was involved in an accident on December 12, 2024. As long as there is a question of fact as to whether the assignor was working within the scope of his employment when an accident occurs, the claim should go to the Workers' Compensation Board first for a determination of that issue. If it is determined that the accident did not occur within the scope of the assignor's employment and the accident involved a motor vehicle such that no-fault insurance would apply, then it should be decided by a no-fault arbitrator.

The primacy of Workers' Compensation for coverage for treatment of injuries that occur when the injured party is in the course of employment has been established. In Arvatz v. Empire Mutual Insurance Company, 171 AD2d 262, 575 NYS2d 836 (1 Dept. 1991), the Court stated in pertinent part: "Where the availability of workers compensation hinges upon the resolution of questions of fact or upon mixed questions of fact and law, the plaintiff may not choose the courts as the forum for the resolution of such questions.

The Legislature has placed the responsibility for these determinations with the Workers Compensation Board and there it must remain."

In the instant case, respondent has come forward with a police accident report which demonstrates that a livery vehicle without a passenger was being driven at the time of the accident.

To support its contention that Workers' Compensation benefits are primary in this case the respondent has also submitted an affidavit from Michael Duignan, Director of Underwriting for the respondent in which he attests to the fact that a taxi policy was issued to the EIP for the motor vehicle which he was operating at the time of the subject accident. Mr. Duignan attested to the fact that this vehicle is affiliated with "black car base B03404, UBER USA, LLC." The issue here is whether there is enough proof in respondent's submissions to raise the question whether the EIP was in the course of his employment at the time of the accident.

The Appellate Courts have held that the burden of proof is quite low in determining whether Worker's Compensation is primary. In Parkway Mgmt., PLLC v. American Transit Ins. Co., 39 Misc.3d 133 (App.Term 2d Dept. 2013) the court held: [w]e find that defendant's proof, including the police accident report was sufficient to raise a question of fact as to whether plaintiff's assignor had been acting as an employee at the time of the accident, which issue must be resolved by the Workers' Compensation Board."

The issue here is whether there is enough proof in respondent's submissions to raise the question whether the EIP was in the course of his employment at the time of the accident.

This decision is not that the claimant was in the course of his employment at the time of accident, but simply that there is enough proof in the respondent's submission to raise this question. The evidence submitted in this case is not sufficient to make this determination. This issue must be resolved by the Workers' Compensation Board for the reasons set forth above.

The applicant has not submitted any evidence to establish that Workers' Compensation benefits should not be primary in this instance.

Based upon the police report, the type of vehicle, the affidavit of Mr. Duignan and the finding in Parkway Mgmt., *supra*, the applicant has not met its burden to establish that it has standing to proceed with this case in this forum.

Accordingly, the claim is dismissed without prejudice.

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 claim is DISMISSED without prejudice

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.

07/27/2026

(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:
11e34fa7b8cecd150eb3b8b8f738944f

Electronically Signed

Your name: Anne Malone
Signed on: 07/27/2026