American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Adult Health NP NYC PC (Applicant)	AAA Case No.	17-25-1403-8662
	Applicant's File No.	181605
- and -	Insurer's Claim File No.	674402449644-002
	NAIC No.	10791
Palisades Insurance Company (Respondent)		

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

   John Gallagher, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

   Joshua Shack, Esq. from Gallo Vitucci Klar, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$203.76**, 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 60 year old EIP reported involvement in a motor vehicle accident on June 2, 2024; claimed related injury and underwent an office visit by a NP, provided by the applicant on October 8, 2024.

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

   The respondent also asserted a fee schedule defense.

The issues to be determined at the hearing are:

Whether the applicant has standing to proceed with this case in this forum.

Whether the respondent established its fee schedule defense.

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.

The respondent denied the claim 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 EUO of the EIP was conducted on September 9, 2024 at which time he testified to the following:

Q. And were you working on the day of the collision?

A. Yes, we were on a coffee break.· And once we finished that, I went back to work, and they came and hit me and hurt me a lot.

> Q. Okay.· So you were on a coffee break, returning to the office when the impact occurred; is that correct?
>
> p. 17 ll. 3-8
>
> Q. Okay.· So let's discuss the actual collision itself, okay?
>
> A. Yes.
>
> Q. All right.· So you mentioned that it happened when you were a pedestrian on June 2, 2024, correct?
>
> A. Yes.
>
> Q. Okay.· Approximately what time did the collision take place between you and the vehicle?
>
> Q. Okay. All right. And where did the collision take place?

P.21 ll.7-14

So when the impact occurred, I was by the van, by the pole, and I was holding my broom. Because when I go on the coffee break, I bring my broom along to clean this area because in my job, I clean this area because people throw garbage. And so I also sweep, and I also clean with the machine.

p.31 ll.10-15

Q. Now, had you - all right. So after your break, had you resumed working at the time that you were struck by the car?

A. Yes, I was at work.

Q. No, I understand you were at your job, but had you resumed actually working?· Like, were you working cleaning up that area when the collision occurred?

A. Yes, yes, yes.

Q. Okay. Had you picked up the broom and started sweeping stuff?

A.· ·No, I hadn't picked up the broom.· I was looking around to see what I would do to check, because there's garbage, and there's all kinds of things to do.

Q. Had you done anything yet?· Picked up garbage?· Had you actually done any work function after your coffee break?

A No, not yet, because it was exactly ten. There were two more minutes.

p.33 ll.21 - p. 34 ll.11

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 (1st 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.

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

Based upon the foregoing and the finding in Parkway Mgmt., *supra,* the applicant has not met its burden to establish that it has standing to procced with this case in this forum.

Under these circumstances, the fee schedule issue need not be decided at this time.

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.

08/15/2026
(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:
02bae4fa27d975e62b4ae0e0f340d7a0

Electronically Signed

Your name: Anne Malone
Signed on: 08/15/2026