

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Habib Hymie Chera
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-25-1387-5387

Applicant's File No. DK24-496648

Insurer's Claim File No. 1148252

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 08/31/2026
Declared closed by the arbitrator on 08/31/2026

Evan Polansky, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Julie Stulberg, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,880.71**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended the amount in dispute to \$1,491.40 to conform to the appropriate fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 46 year old EIP reported involvement in a motor vehicle accident on May 12, 2024; claimed related injury and underwent ultrasound of the spinal canal, bilateral shoulders, knees and elbows provided by the applicant on June 11, 2024.

The applicant submitted a claim for these medical services, payment of which was denied by the respondent based on the peer review by Michael Tawfelllos, M.D. This peer review was not included in the submissions for this claim.

The applicant contends that the denial of this claim is late on its face.

The issues to be determined at the hearing are:

Whether the denial is timely and proper.

Whether the respondent established that the medical services at issue were not medically necessary.

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.

Timeliness of the Denial

Before a determination can be made regarding the defense of lack of medical necessity a determination must be made regarding the timeliness of the denial (NF-10.)

The penalty for an insurer's failure to issue a timely and proper denial of claim is that it will be precluded from objecting to the claim. In Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co., 114 A.D.3d 33 (2d Dept. 2013) the Appellate Division held that:

Challenges and objections regarding whether the services were in fact rendered, were causally related to a covered accident or were medically necessary are not available to the defendant insurer after the onset of litigation unless the insurer proffered a timely and proper denial of claim within the prescribed time frame.

According to the denial, the bill for date of service June 11, 2024 was received by the respondent on July 15, 2026. The NF-10 was dated December 6, 2024 which is more than 30 days after receipt of the bill.

Under these circumstances, the respondent did not issue a proper and timely denial within the prescribed time frame of 30 days from receipt of the bill in question and is precluded from objecting to the claim. Viviane Etienne, *supra*.

Based on the foregoing, the respondent has failed to establish its defense of lack of medical necessity.

Accordingly, the applicant is awarded \$1,491.40 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	Amount Amended	Status
	Habib Hymie Chera	06/11/24 - 06/11/24	\$1,880.71	\$1,491.40	Awarded: \$1,491.40
Total			\$1,880.71		Awarded: \$1,491.40

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/20/2025 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.

09/11/2026

(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:
d7cd701192a9ad2310e948b842269ded

Electronically Signed

Your name: Anne Malone
Signed on: 09/11/2026