

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-25-1430-9982

Applicant's File No. AR25-28434

Insurer's Claim File No. 1127906

NAIC No. 16616

ARBITRATION AWARD

I, Diane Flood Taylor, 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: Assignor

1. Hearing(s) held on 09/24/2026
Declared closed by the arbitrator on 09/24/2026

Jeffrey M. Kramer from Law Office of Jeffrey M. Kramer participated virtually for the Applicant

Peter Famuyide from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$886.47**, 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

Whether the Applicant is entitled to recover No-Fault insurance compensation for physical therapy, which Respondent denies as unrelated to the accident and as medically unnecessary predicated upon an independent medical examination (IME).

Applicant seeks reimbursement in the amount of \$886.47 for physical therapy in connection with the management of injuries sustained by the Assignor, BRR, a then 33-year-old female who, on 3/22/23, was involved in a collision with the insured motor vehicle.

Respondent issues denials premised on claimant's testimony at an EUO which Respondent alleges "'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."

In a prior arbitration, Arbitrator Darren Sheehan found in favor of Applicant with this defense.

In addition, Respondent issues denials based on an IME conducted by Magda Fahmy, MD, on 11/14/23. It is noted that there are prior awards with this IME in favor of Respondent, as discussed in more detail below.

The decision below is based upon a review of the documents that have been submitted electronically, as well as the arguments of counsel and/or representatives appearing via video conference on behalf of the parties.

4. Findings, Conclusions, and Basis Therefor

In dispute in the arbitration are 11 bills for physical therapy performed between 9/9/24 and 5/30/25.

Respondent raised no issue or argument concerning Applicant's submission of proof of claim.

Applicant establishes its prima facie entitlement to reimbursement with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue. See Insurance Law § 5106(a); Viviane Etienne Med. Care v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501 (2015); Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564 (2nd Dept., 2004).

The burden shifts to the Respondent to establish the facts in support of its defense.

Issue: Lack of Causality

Denials

Respondent issues denials which state, inter alia:

"Entire claim is denied based on the Examination Under Oath conducted on 01/09/2024, 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."

Legal Authority

Respondent bears the burden of proof to show that "the claimant's treated condition was unrelated to the motor vehicle accident." An insurer asserting the defense "has the burden to come forward with proof in admissible form to establish 'the fact' or the evidentiary 'foundation for its belief' that there is no coverage." See Mount Sinai Hosp. v. Triboro Coach, 263 A.D.2d 11, 19-20 (2d Dept. 1999), quoting Central Gen Hosp. v. Chubb Group of Ins. Co., 90 N.Y.2d at 199. See also Hospital for Joint Diseases v. Hertz Corp., 9 A.D.3d 392, 392 (2d Dept. 2004); St. Luke's Roosevelt Hosp. v. Allstate Ins. Co., 303 A.D.2d 743, 744 (2d Dept. 2003).

In Kingsbrook Jewish Medical Center v. Allstate Ins. Co., 61 A.D. 3d 13, 871 N.Y.S. 2d 680, decided 1/20/09, the Appellate Division, Second Department ruled that exacerbations of pre-existing conditions are covered by No-Fault, and that causation is presumed."

Evidence

Respondent submits the EUO transcript of testimony of the claimant on 2/22/22.

Respondent fails to provide a brief to outline the testimony or other evidence in support of their denial of coverage.

To be clear, Respondent fails to marshal the evidence it asserts supports its position.

Collateral Estoppel

In a related/linked matter, AAA Case No. 17-24-1364-0581, Arbitrator Darren Sheehan issued an award dated 3/28/25 in favor of Applicant with this identical issue.

Arbitrator Sheehan found, in pertinent part:

It should not be up to this arbitrator at the time of the hearing to make respondent's arguments or for that matter try to even find them.

Are we to comb through the transcript to piece together what we believe might have formed respondent's basis for denial?

And also, is it fair to leave the applicant wondering what particular testimony respondent hung to when receiving a denial of its claim?

Is it too difficult to ask that respondent submit the transcript and refer to the page and line numbers, so we have a specific understanding at the time of the denial as to then also allow applicant ample opportunity to refute the denial of their claim?

Thus, for the reasons set forth above, respondent did not establish its basis for denial.

Issue: Late Denial of Claim

Applicant argues the denial of the 11/1/24-11/11/24 bill and the 3/19/24-3/27/24 bill are late on their face.

The NF-10s reflect the Respondent admits receipt of the respective bills on 12/13/24 and 4/12/25, and the denials are dated 1/15/25 and 5/29/25, over 30 days post-receipt of the bill, in violation of the regulation.

Issue: IME Magda Fahmy, MD 11/14/23

Prior Award

In a related/linked matter, AAA Case No. 17-24-1364-0584, Arbitrator Darren Sheehan issued an award dated 3/28/25 in favor of Respondent with the issue of a lack of medical necessity as found by Magda Fahmy premised on an IME conducted on 11/14/23.

Arbitrator Sheehan found, in pertinent part:

On the basis of this evaluation, together with the doctor's review of the treatment records provided to him, it was determined that the claimant's injuries had resolved and no further treatment was medically necessary.

It was clear to me that Dr. Fahmy conducted a thorough examination and overall observed only normal findings from his evaluation. In my view, this IME sufficiently established the lack of medical necessity for continued treatment.

In contrast, I reviewed the medical records submitted by applicant to determine if any contemporaneous records refute the IME.

There was the 10/9/2023 and 11/3/2023 re-evaluations by the applicant provider, however these reports offered nothing in value.

Therefore, as it pertains to those claims that were also denied on the basis of this IME, I uphold respondent's basis of denial and award in applicant's favor only on the other claims (see below for breakdown).

Discussion

Applicant argues the contemporaneous medical reports and "rebuttal to the IME" it submits ought to be considered here and weighed against the IME findings of Dr. Fahmy.

Arbitrator Drew M. Gewuerz addressed this issue in Matter of Center for Neurorestorative Medicine and Allstate Insurance Company, AAA Case No. 17-19-1131-9888.

Arbitrator Gewuerz states, in relevant part:

To invoke collateral estoppel, certain generally accepted and adhered to basic requirements must be met. A former adjudication will be binding in subsequent litigation (upon certain persons, as outlined below) provided that the issue presented: (a) is identical; (b) was actually litigated; (c) was essential to the determination; and (d) was "ultimate" or "material" in the prior action and is also "ultimate" in the present suit. Maurice Rosenberg, *Collateral Estoppel in New York*, 44 St. John's L. Rev. 165, 171 (1969). "Essential to the determination" means "necessarily determined" in prior litigation. See Karameros v. Luther, 279 NY 87 (1938) stating that if determination made on each of several issues in former suit was essential to judgment, all issues precluded from further contest.

Collateral estoppel is applicable to issues resolved by arbitration. Rembrandt Ind. v. Hodges, 38 NY2d 502 (1976); American Ins. Co. v. Messenger, 43 NY2d 184 (1977). A no-fault arbitrator's award is entitled to the same collateral estoppel effect as other arbitration awards. Kilduff v. Donna Oil Corp., 74 AD2d 562 (App. Div. 2d Dept 1980).

Collateral estoppel applies to this case and is properly invoked against the Respondent because the issue presented is identical and was actually litigated in the prior arbitration. Unquestionably, the issue of whether the Assignor warranted further post-IME medically necessary treatment was essential to the determination of and "ultimate" or "material" in the prior arbitration, which could not have otherwise proceeded and no substantive award could have been made unless a determination of said issue was made. Said issue was so central to the prior action's dispute that it is reasonably certain that all parties had sufficient motive to fully litigate it, and we can tell with certainty what was found by the prior tribunal. Weinstein, Korn & Miller, New York Civil Practice §See 5011.29 (1968).

It is noted that Respondent denies all 11 bills premised, in part, on Dr. Fahmy's IME.

Legal Authority: Late Denial

A no-fault claim must be paid or denied within thirty (30) days after proof of claim is received or it is "overdue". N.Y. Ins. Law § 5106[a]; 11 NYCRR 65-3.8(a)(1); Presbyterian Hospital v. Maryland Cas. Co., 90 N.Y.2d 274 (1997). Within 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part. 11 NYCRR §65-3.8(c).

Legal Authority: Collateral Estoppel

"The doctrine of collateral estoppel, a narrower species of res judicata, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same." See, Rizz Management Inc. a/a/o JF v. State Farm Mut. Auto. Ins. Co., 867. N.Y.S. 2d 20 (2008).

Findings

Premised on the credible evidence, I find Respondent failed to timely deny the 11/1/24-11/11/24 and 3/19/24-3/27/24 bills; therefore, reimbursement in the amount of \$100.92 + \$67.29 = \$168.20 is awarded.

Respondent clearly violates the 30- day period prescribed by Insurance Law §5106 (a) and 11 NYCRR 65-3.8(a)(1); therefore, reimbursement in the billed amounts is due.

I find Respondent failed to coherently establish its defense premised on a lack of causality based on claimant's EUO testimony and Arbitrator Sheenan previously found Respondent failed to establish this defense in a prior award with this identical issue.

However, inasmuch as Respondent denied all bills on the lack of causality AND the lack of medical necessity premised on Dr. Fahmy's IME, the nine bills not subject to my determination as late are denied based on collateral estoppel with Arbitrator Sheenan's award in favor of Respondent with Dr. Fahmy's IME, as collateral estoppel properly applies here.

Accordingly, after reviewing the entire record and after careful consideration of the parties' oral arguments, I find in favor of Applicant for the 11/1/24-11/11/24 and 3/19/24-3/27/24 bills only. Any further issues raised in the record are held to

be moot and/or waived insofar as not raised at the time of the 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
	Brooklyn Medical Practice, PC	08/08/24 - 05/30/25	\$886.47	Awarded: \$168.20
Total			\$886.47	Awarded: \$168.20

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/28/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the initiation date for this case until the date that payment is made at two percent (2%) per month, simple interest, on a pro rata basis using a thirty-day month under 11 NYCRR 65-3.9 (a).

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Respondent shall pay Applicant an attorney's fee equal to twenty percent (20%) of the total amount of first-party benefits awarded, plus interest thereon, as provided for in 11 NYCRR 65-4.6(d), subject to a maximum fee of \$1,360.00.

- 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 Westchester

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

09/29/2026
(Dated)

Diane Flood Taylor

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:
c21426ae6b314af1a6e5fecf3153ab76

Electronically Signed

Your name: Diane Flood Taylor
Signed on: 09/29/2026