

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-18-1096-7822
Applicant's File No. 2117505
Insurer's Claim File No. 0353688290101034
NAIC No. 35882

ARBITRATION AWARD

I, Jacques M. Leandre, 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 (RO)

1. Hearing(s) held on 09/30/2019
Declared closed by the arbitrator on 09/30/2019

Justin Skaferowsky from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the **Applicant**

Frank Randazzo from Geico Insurance Company participated in person for the **Respondent**

2. The amount claimed in the Arbitration Request, **\$ 92.98**, 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 Assignor (RO), a 22 year old female was involved in a motor vehicle accident on 6/27/17. At issue in this case is \$92.98 for medical services which were provided on 5/4/18. Respondent timely denied the claim based on several issues, but the determinative issue presented is whether the Respondent has established that the policy of insurance is exhausted.

4. Findings, Conclusions, and Basis Therefor

This hearing was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. No witnesses testified at this hearing. Any documents contained in the electronic file are hereby incorporated into this hearing. I have reviewed all relevant exhibits for both parties and make my decision in reliance thereon. Hence, all other arguments are considered waived if not presented at such hearing.

Policy Exhaustion Defense

Insurance Law § 5102(a) defines basic economic losses reimbursement up to \$50,000.00 per person for all necessary expenses arising from a motor vehicle accident as covered under New York Insurance Law § 5102. When an insurer has paid full monetary limits set forth in the policy, however, its duties under the contract of insurance cease. See New York State Department of Insurance General Counsel Opinion Letter dated July 30, 2008.

When an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease. Countrywide Ins. Co. v. Swah, 272 A.D.2d 245 (1st Dept. 2000) A defense of no coverage due to the exhaustion of No-Fault insurance policy's limit may be asserted by an insurer despite its failure to issue a NF-10 denial of claim form within the requisite 30 day period. New York & Presby. Hosp. v. Allstate Ins. Co., 12 A.D.3d 579, 580 (2d Dept. 2004); Flushing Traditional Acupuncture, P.C. v. Infinity Group, 2012 NY Slip Op 22345 (App Term 2d, 11th & 13th Jud Dists, November 26, 2012); Crossbridge Diagnostic Radiology v. Encompass Ins., 24 Misc.3d 134(A), 2009 NY Slip Op 5141(U) (App Term 2d, 11th & 13th Jud Dists, 2009). An Arbitrator's award directing payment in excess of the limits of an insurance policy exceeds the arbitrator's power and constitutes grounds for vacatur of the award. Matter of Brijmohan v. State Farm Ins. Co., 92 N.Y.2d 821, 822 (1998); Countrywide Ins. Co. v. Sawh, 272 A.D.2d 245 (1st Dept. 2000).

In support of the contention that the policy has been exhausted, Respondent submits a copy of the declaration page for the policy at issue in this case, showing the mandatory personal injury protection to be \$50,000. The declaration page also shows that no additional personal injury protection is available on this policy.

Respondent also submits a pay ledger showing that as of 3/20/19, payments totaling the policy limits has been paid out. The offset for the deductible, combined with the amount paid, exhausted the \$50,000 limit. An insured is entitled to receive first-party benefits under the No-Fault Law equal to his basic economic loss, up to \$50,000 less the deductions set forth in the Insurance Law. Normile v. Allstate Ins. Co., 60 N.Y.2d 1003, 471 N.Y.S.2d 550 (1983), aff'g, 87 A.D.2d 721, 448 N.Y.S.2d 907 (3d Dept. 1982).

Applicant argues that Alleviation Med. Svcs. P.C. v. Allstate, 55 Misc.3d 44, 2017 N.Y. Slip Op. 27097 (App. Term, 2nd, 11th and 13th Jud. Dists.) requires a different result, and asserts that since there was money left on the policy when the Applicant's bills were received by the Respondent and denied, that this bill should have been paid ahead of any subsequently received bills. I respectfully disagree. In Alleviation, the Appellate Term upheld the Civil Court's denial of summary judgment to the defendant insurance company on the issue of policy exhaustion. As such, I do not read Alleviation to outright overturn the long line of case law that clearly states an insurer's liability ends upon exhaustion of its policy limits. Rather, I choose to follow the decision of the Appellate

Term, First Department in Harmonic Physical Therapy v. Praetorian Insurance Company, 47 Misc.3d 137(a), 2015 N.Y. Slip Op. 50525(u)(App. Term 1st Dept.2015) which holds that timely denied claims do not hold a place in the priority of payment line ahead of subsequently filed claims that were paid by the Respondent.

Upon reviewing the Respondent's submission, it is clear the policy at issue has been exhausted, and the Applicant's claim is denied.

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 DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York
SS :
County of Nassau

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

10/29/2019
(Dated)

Jacques M. Leandre

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:
2b087d36003e9cb161163f44c8e82b1f

Electronically Signed

Your name: Jacques M. Leandre
Signed on: 10/29/2019