

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.	17-18-1096-0582
Applicant's File No.	2111924
Insurer's Claim File No.	0509316530101027
NAIC No.	35882

ARBITRATION AWARD

I, Stacey Charkey, 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 11/05/2019
Declared closed by the arbitrator on 11/05/2019

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

Zelideth Maguina, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 236.94**, 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

Is respondent's denial based on policy exhaustion sustainable?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for treatment following an automobile accident. The charges were timely denied based upon the results of an IME performed by Respondent's consultant. Applicant sought reimbursement for these services in arbitration. Following the issuance of the denial the policy under which applicant seeks

reimbursement became exhausted and a denial was subsequently issued based on policy exhaustion. Respondent submits the policy documentation and payment ledger demonstrating that the \$50,000 policy limit has been exhausted.

After reviewing the evidence submitted by Applicant, I find that Applicant has submitted sufficient credible evidence to establish a prima facie case with respect to the treatment for which it now seeks reimbursement. *See, Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 N.Y.3d. 498, 2015 NY Slip Op 04787, (2015).

Respondent originally issued a timely denial predicated upon an IME cut-off defense. Thereafter, Respondent issued a general denial to Assignor advising that the No-Fault benefits available under the policy had been exhausted. In Support of its defense, Respondent has submitted the subject Policy Declarations page setting forth a total of \$50,000.00 in available benefits. Respondent has also submitted Payment logs setting forth that the available benefits have been exhausted.

Counsel for Applicant asserts that pursuant to Alleviation Med. Services PC v. Allstate Ins. Co., 2017 NY Slip Op 27097, 55 Misc. 3d 44 (App. Term 2d. 11th and 13th Jud Dists, May 17, 2017), Respondent is required to pay the claim despite the policy exhaustion if medical necessity is established.

In Alleviation, the Court held:

As we read Nyack Hosp. to hold that fully verified claims are payable in the order they are received (see 11 NYCRR 65-3.8[b][3]; 65-3.15; Nyack Hosp., 8 NY3d 294), defendant's argument—that it need not pay the claim at issue because defendant paid other claims after it had denied the instant claim, which subsequent payments exhausted the available coverage—lacks merit (see 11 NYCRR 65-3.15; cf. Nyack Hosp., 8 NY3d 294; but see Harmonic Physical Therapy, P.C. v. Praetorian Ins. Co., 47 Misc. 3d 137[A], 2015 NY Slip Op 50525[U] [App Term, 1st Dept. 2015]). Consequently, defendant has not established its entitlement to summary judgment dismissing the complaint.

However, in Harmonic Physical Therapy, P.C. v. Praetorian Ins. Co., 2015 NY Slip Op 50525(U); 47 Misc. 3d. 137(a) (App. Term. 1st Dept. April 14, 2015) the Court held:

The evidentiary proof submitted by defendant established that, following the timely denial of plaintiff-provider's claim on the ground of lack of medical necessity, the governing insurance policy's coverage limits had been exhausted through payment of no-fault benefits in satisfaction of arbitration awards rendered in favor of other health care providers, and that such payments were made in compliance with the priority of payment regulation. Contrary to plaintiff's contention, defendant was not precluded by 11 NYCRR 65-3.15 from paying other

providers' legitimate claims subsequent to the denial of plaintiff's claims. Adopting plaintiff's position, which would require defendant to delay payment on uncontested claims, or, as here, on binding arbitration awards - pending resolution of plaintiff's disputed claim - "runs counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims" (Nyack Hosp. v. General Motors Accept. Corp., 8 NY3d at 300).

The evidence reveals that Respondent timely denied Applicant's claim based upon an IME cut-off and thereafter the policy limits were exhausted by payments for other subsequent claims by other providers. I find that the Court's holding in Harmonic constitutes a more precise elucidation of the existing case law regarding the requirements of an insurer upon exhaustion of an insurance policy and the No-Fault regulations priority of payment of claims. To hold otherwise, as noted by the Court in Harmonic, "runs counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims."

Accordingly, I find that the subject insurance policy has been exhausted and Applicant's claim is denied. *See also*, Mount Sinai Hospital v. Zurich American Insurance Co., 15 A.D.3d 550, 790 N.Y.S.2d 216 (2nd Dept. 2005.) Furthermore, an arbitrator's award directing payment in excess of the policy limit of a No-Fault insurance policy exceeds the arbitrator's power and constitutes grounds for vacatur of the award. *See*, Matter of Brijmohan v. State Farm Ins. Co., 92 N.Y.2d 821 (1998). I find the proof sufficient to establish exhaustion which relieves the carrier from making any further payments for claims arising from the underlying accident. The policy has become exhausted relieving the respondent from making any further payments. Presbyterian Hospital v. Liberty Mut. Ins. Co., 216 AD2d 448; Nyack Hospital v. General Motors Acceptance Corp., 8 NY3d 294.

Accordingly, the charges are 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 Queens

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

12/03/2019

(Dated)

Stacey Charkey

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:
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Electronically Signed

Your name: Stacey Charkey
Signed on: 12/03/2019