

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Trinity Pain Management of Staten Island,  
PLLC  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No.	17-20-1168-0838
Applicant's File No.	16607
Insurer's Claim File No.	334767B27
NAIC No.	25178

**ARBITRATION AWARD**

I, Kent Benziger, 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: M.F.

1. Hearing(s) held on 02/26/2021  
Declared closed by the arbitrator on 03/29/2021

Frank S. Patruno, Esq. from Frank S. Patruno Law Offices, P.C participated by telephone for the Applicant

James Karins, Esq. from James F. Butler & Associates participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,143.63**, 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

On June 16, 2018, the Assignor/Eligible Injured Party, a 42-year-old female, was, by history, involved in a motor accident. On February 23, 2019, Dr. Abrahams administered the treatment in dispute of bilateral cervical facet joint medial branch blocks under fluoroscopic guidance. The Applicant billed \$1473.46 for two levels of the joint blocks (CPT 64490, 64491). Through a partial denial, the Respondent reimbursed \$329.83. The Respondent reimbursed \$188.96 of the \$989.86 billed for CPT 64490 and \$140.87 of the \$483.60 billed for CPT 64491. The primary basis for the reduction was for services provided outside New York State - in this case in New Jersey - for a New

York resident shall be the lowest of the New York fee schedule and the geographic location of the provider.

However, the primary issue is the exhaustion of coverage. The Assignor was covered by a North Carolina policy of insurance. The Respondent has documented that the policy did not provide No-Fault or PIP (personal injury protection) coverage. However, pursuant to the New York Deemer statute and as the accident occurred in New York, State Farm is required to provide the minimum of \$50,000 in PIP coverage. The Respondent has also established that the coverage is exhausted.

This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

#### 4. Findings, Conclusions, and Basis Therefor

On June 16, 2018, the Assignor/Eligible Injured Party, a 42-year-old female, was, by history, involved in a motor accident. Two days later the Assignor was evaluated at an emergency room where diagnostic studies were performed. On June 21, 2018, the Assignor was evaluated Dr. Yvette Abraham. Following an evaluation, the diagnoses included sprain/strains of the neck and cervical spine and contusion of the knees. The Assignor commenced conservative care. On August 17, 2018, a lower extremity EMG/NCV was interpreted as revealing evidence of bilateral L4-5 and L5-S1 radiculopathies. The Assignor could not tolerate further NCV studies. In the fall of 2018 lumbar facet joint blocks were administered.

On February 23, 2019, Dr. Abrahams administered the treatment in dispute of bilateral cervical facet joint medial branch blocks under fluoroscopic guidance. The Applicant billed \$1473.46 for two levels of the joint blocks (CPT 64490, 64491).

Through a denial, the Respondent reimbursed \$329.83. The Respondent reimbursed \$188.96 of the \$989.86 billed for CPT 64490 and \$140.87 of the \$483.60 billed for CPT 64491. The stated primary basis for the reductions included the following:

The amount allowed for professional health services performed outside of New York State for a New York resident shall be the lowest of (1) the amount set forth in the New York fee schedule that has the highest applicable fee; (2) the amount charged by the provider; and (3) the prevailing fee in the geographic location of the provider. (Pursuant to 11 NYCRR 68.6(b), for a professional health

service reimbursable under section 5102(a)(1) of the Insurance Law.)

The provider is using modifier(s) -50, -LT, and/or -RT to identify bilateral and or unilateral procedures that are performed at the same operative session and/or service.

Exhaustion of Coverage. The accident in dispute occurred in the Bronx, New York. The Assignor was covered by a North Carolina policy of insurance. Through the Declaration Page, the North Carolina law does not provide for Personal Injury Protection (PIP) or MedPay coverage (N.C.G.S.A § 20-279.21). However, as the accident took place in New York and pursuant to N.Y. Ins. Law § 5107 the "Deemer Statute" creates \$50,000 of PIP coverage. The above explanation is a straight-forward application of the applicable law. Applicant's counsel wanted additional proof that no additional coverage was applicable. Jennifer Kika, an Underwriter at State Farm in New York, then submitted an affidavit that apart from the required limits of New York's Deemer Statute, the North Carolina policy had no additional applicable coverage.

STATE FARM's North Carolina automobile policy of insurance for M. F. in effect on the date of the subject accident, June 16, 2018, under policy number 358 7998-E30-33D included coverage only for Bodily Injury & Property Damage Liability, Other than Collision, Collision, Towing and Labor Costs, Increased Limits Transportation Expenses, and Combined Uninsured/Underinsured Motorists. None of these coverages include Personal Injury Protection or Medical Payments coverage. Policy number 358 7998-E30-33D issued to M. F. did not include any endorsements for Personal Injury Protection coverage or Medical Payments coverage.

Policy Exhaustion. As noted based on the Deemer Statute, the Respondent has acknowledged the applicable \$50,000 in Personal Injury Protection. The Respondent has submitted a payment log dated May 29, 2019 which noted a final payment on May 1, 2019 documenting total payments totaling \$50,000.

An insurer is not required to pay a claim where the policy limits have been exhausted. *Mount Sinai Hospital v. Zurich American Insurance Co.*, 15 A.D.3d 550, 790 N.Y.S.2d 216 (2d Dept. 2005). The Carrier's duties under the insurance contract cease when it pays the full monetary limits. *Hospital for Joint Diseases v. State Farm Mutual Automobile Insurance Co.*, 8 A.D.3d 533, (2d Dept. 2004). No further amount is due. Arbitrator Natia Pavel reached a similar determination in the linked case of *Trinity Pain Management v. State Farm*. AAA Case No. 17-19-1132-9326 (January 5, 2021):

Respondent submits a Global Denial dated 5/9/19 with the defense stated as "Your policy limit of \$50,000.00 under the New York State No-Fault law has been exhausted.

Therefore, we will be unable to consider any further payments." Respondent also submits a payment ledger showing that there was a total payout of \$50,000.00. Respondent also submitted a copy of the Insurance Policy Declarations Page establishing that this was an insurance policy issued in North Carolina and is therefore bound by New York PIP policy limits of \$50,000.00. Therefore, Respondent has established the \$50,000.00 PIP coverage limit.

Therefore, as the policy is exhausted, this arbitrator need not address the fee schedule issue. However, the Respondent's straight forward application of the New York Fee schedule for this procedure is not rebutted. Applicant's claim is denied in its entirety.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

**APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.**

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 Orange

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

04/08/2021  
(Dated)

Kent Benziger

#### **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:**  
31e8d3493b4659306292533db10ad520

### **Electronically Signed**

Your name: Kent Benziger  
Signed on: 04/08/2021