

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

I Kataeva Care Physical Therapy PC  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-19-1141-8531

Applicant's File No. 161657275

Insurer's Claim File No. 40-6033-P39

NAIC No. 25178

**ARBITRATION AWARD**

I, Melissa Abraham-LoFurno, 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: MP

1. Hearing(s) held on 04/26/2021  
Declared closed by the arbitrator on 04/28/2021

Samantha McIssac, Esq. from Law Offices of Zara Javakov, Esq. P.C. participated in person for the Applicant

Lisa Weiss, Paralegal from James F. Butler & Associates participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,807.85**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated to Fee Schedule.

3. Summary of Issues in Dispute

The within award is based upon this arbitrator's review of the record as well as oral argument at the time of the hearing of this matter.

The claimant in this case is a 54-year old female hereinafter "MP", who was involved in a motor vehicle accident that occurred on 10/01/18. Following the accident, MP suffered injuries which resulted in the claimant seeking treatment. Thereafter, MP came under the care of Applicant. Respondent denied the dates of service at issue based on policy exhaustion.

ISSUE:

Whether the No-Fault policy at issue has been exhausted?

4. Findings, Conclusions, and Basis Therefor

It must be stated that Arbitrator Joshua Adler given the same evidence as is before me found that the policy in fact has been exhausted and as such no additional reimbursement can be issued. See AAA#17-19-1129-1594.

*"Respondent has uploaded sufficient proof of exhaustion, including the global denial, ledger, and the policy's "Dec Page." I find - and applicant does not dispute - that there is nothing now left on the policy."*

*"As an arbitrator of this Panel, I have no authority to issue an Award in excess of the policy limits (see Matter of Brijmohan v State Farm Ins. Co., 92 NY2d 821, 677 NYS2d 55 [1998] ["The declarations page produced at the confirmation proceeding demonstrates that the arbitrator's award was beyond the policy limits and therefore in excess of the arbitrator's powers"])."*

*"I accept the respondent's "exhaustion" argument, and am constrained to deny the claim."*

Given the same evidence is before me, I see no reason to differ from Arbitrator Adler's prior decision with regard to policy exhaustion and as such I find for Respondent based on the doctrine of collateral estoppel.

It must be stated here that Applicant in this case argues improper claims handling as as such argues that the claim was denied improperly and should have been paid prior to the exhaustion of the policy at issue. Specifically, Applicant argues that Respondent improperly denied the claim based on the defense of Fee Schedule. However, upon review of the denial itself, i find that the original denial of claim was in fact issued timely and was properly denied based on Fee Schedule as this is a defense that is available to Respondent at any time.

I find that the doctrine of collateral estoppel is appropriate in this case. The Court of Appeals has held that the doctrine of collateral estoppel "is applicable to issues resolved by earlier arbitration." Rembrandt Industries v. Hodges International, 38 N.Y.2d 592, 381 N.Y.S.2d 383. Furthermore, it is within the Arbitrator's authority to determine the

preclusive effect of a prior arbitration. See *Matter of Falzone v. New York Central Mutual Fire Ins. Co.*, 64 A.D.3d 1149, 881 N.Y.S.2d 769 (4 Dept. 2009). It has also been held that "a judgment in one action is conclusive in a later one... when the two causes of action have such measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first..." See *Matter of Ranni*, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982); *Monroe v. Providence Washington Ins. Co.*, 126 A.D.2d 929, 511, N.Y.S.2d 449 (3d Dept. 1987).

Again, upon careful consideration of the record, I find that the evidence favors Respondent.

Therefore, I find Arbitrator Adler's well-thought out decision to be appropriately determinative of the case before him, as well as of the matter at hand. As such, I find no reason to reach a different determination. The defense has been sustained. The Respondent has offered sufficient evidence to sustain its denial of the services at issue.

Additionally, with respect to the claims for treatment prior to the policy exhaustion, counsel for Applicant referencing *Alleviation Medical Services, P.C. v Allstate*, 2017 N.Y. Slip Op. 27097 (App. Term 2, 11 and 13 Jud. Dists. 2017), argued that Applicant is entitled to reimbursement for the treatment provided because Respondent incorrectly denied the bills at issue. Further, since the policy was not exhausted at the time the bills were received, Applicant's bills should have been paid ahead of any bills subsequently received by the Respondent. I decline to follow the decision in *Alleviation*. Rather, I choose to follow the decision of the Appellate Term, First Department in *Harmonic Physical Therapy, P.C. v. Praetorian Ins. Co.*, 47 Misc.3d 137(A), 15 N.Y.S.3d 711 (Table), 2015 N.Y. Slip Op. 50525(U), 2015 WL 1649002 (App. Term 1st Dept. Apr. 14, 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.

At this time, it must be stated that an arbitrator's award directing payment in excess of the \$50,000.00 limit of a No-Fault insurance policy exceeds the arbitrator's power and constitutes grounds for vacatur of the award. See, 11 NYCRR 65-4.10 (a) (2). See, also *Brijmohan v. State Farm Ins. Co.*, 92 NY2d 821 (1998); *Country-wide Ins. Co. v. Sawh*, 272 AD2d 245 (1st Dept. 2000); *Allstate Ins. Co. v. DeMoura*, 30 Misc.3d 145(A) (N.Y. App. Term 2011).

**Accordingly, 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 Suffolk

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

05/25/2021  
(Dated)

Melissa Abraham-LoFurno

### **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:**  
d86d5aae9a23fdecad450ff865b7cefd

### **Electronically Signed**

Your name: Melissa Abraham-LoFurno  
Signed on: 05/25/2021