

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Accelerated DME Recovery Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-19-1137-1432
Applicant's File No.	GS-763995
Insurer's Claim File No.	0435080700101022
NAIC No.	35882

ARBITRATION AWARD

I, Mary Anne Theiss, 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: Claimant

1. Hearing(s) held on 08/19/2021
Declared closed by the arbitrator on 08/25/2021

Koenig Pierre, Esq. from Law Offices Of Gabriel & Shapiro, LLC. participated in person for the Applicant

Christa Varone, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 920.78**, 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 issue is whether the policy is exhausted. The amount in question is \$920.78 for dates of service 9/27/18 to 10/10/18.

4. Findings, Conclusions, and Basis Therefor

An insurer is not required to pay a claim where the policy limits have been exhausted. See *Mount Sinai Hospital v. Zurich American Insurance Co.*, 15 A.D.3d 550, 790 N.Y.S.2d 216 (2d Dept. 2005). When an insurance carrier ". . . has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease", see *Presbyterian Hosp. in the City of New York v. Liberty Mut Ins Co.*, 216 A.D.2d 448, 628 N.Y.S.2d 396 (2d Dept. 1995), and; a policy exhaustion defense is not precluded where a claim was improperly denied or where the Denial of Claim (NF-10) form is not issued within 30 days. See *New York and Presbyterian Hospital v. Allstate Ins. Co.*, 12 A.D.3d 579, 786 N.Y.S.2d 68 (2d Dept. 2004); *Crossbridge Diagnostic Radiology v. Encompass Insurance*, 24 Misc. 3d 134(A), 2009 NY Slip Op 51415(U), 2009 WL 1911909 (App. Term 2d, 11th & 13th Dists. June 23, 2009). Insurance Law § 5102(a) defines "basic economic loss" as follows: (a) "Basic economic loss" means, up to fifty thousand dollars per person of the following combined items, subject to the limitations of section five thousand one hundred eight of this article.

Once the contractual policy limits have been exhausted, the carrier is under no further obligation under the contract of insurance. "An insurer is not required to pay a claim where the policy limits have been exhausted. [W]here, as here an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease" *Hospital For Joint Diseases v. State Farm Mutual Automobile Ins. Co.*, 8 A.D.3d 533, 779 N.Y.S.2d 534 (2nd Dept. 2004); *Hospital For Joint Diseases v. Hertz Corp.*, 22 A.D.3d 724 (2nd Dept. 2005), (citing *Presbyterian Hospital in City of N.Y. v Liberty Mutual Auto Ins. Co.*, 216 AD2d 448; see *Hospital for Joint Diseases v State Farm Mut. Auto Ins. Co.*, 8 AD 3d 533, 534; *New York & Presbyterian Hosp. v Progressive Cas. Ins. Co.*, 5 AD 3d 568, 570).

New York Insurance Law § 5102 Insurance Law 5102(a) provides as follows:

(a) "Basic economic loss" means, up to fifty thousand dollars per person of the following combined items, subject to the limitations of section five thousand one hundred eight of this article: (1) All necessary expenses incurred for: (i) medical, hospital (including services rendered in compliance with article forty-one of the public health law, whether or not such services are rendered directly by a

hospital), surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services; (ii) psychiatric, physical and occupational therapy and rehabilitation; (iii) any non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this state; and (iv) any other professional health services; all without limitation as to time, provided that within one year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury. For the purpose of determining basic economic loss, the expenses incurred under this paragraph shall be in accordance with the limitations of section five thousand one hundred eight of this article".

In support of the defense of policy exhaustion, GEICO's evidentiary submission includes a copy of the policy Declarations page, showing the maximum No-fault benefit to which the Assignor is entitled (\$50,000) and a copy of the Personal Injury Protection ("PIP") payment ledger, showing payment of medical claims, lost wages and wage loss offsets. Specifically, according to the PIP payment ledger, GEICO issued payment for Assignor's healthcare claims, lost wages and wage loss offsets, in the amount of \$50,000.00) and, therefore, the Assignor received benefits in the amount available under the subject policy under which claims were submitted. To that end, the policy is exhausted and there are no monies available for payment of any additional claims.

The courts have consistently held that where an insurer has paid the full monetary limits set forth in the insurance policy, its duty under the contract of insurance ceases. See *Allstate Ins. Co. v. Demoura*, 30 Misc.3d 145(A), 2011 WL 1107134 (N.Y. Sup. App. Term, 2011); *Champagne v. State Farm Mutual Automobile Insurance Co.*, 185 A.D.2d 835; *Presbyterian Hospital in the City of New York as Assignee of Kenneth Mandel v. Liberty Mutual Insurance Company*, 216 A.D.2d 448, 628 N.Y.S.D. 396 (2d Dept. 1995); *Hospital for Joint Diseases Etc. v. State Farm Mutual Automobile Insurance Company*, N.Y.L.J. June 25, 2004, page 29 col. 5. Further, the holdings of the cases above remain the same whether the insurer issues a timely, late or no denial. That is, the courts have held that a new policy or additional coverage, in excess of the contractual amount, could not be created by virtue of a late denial. *Presbyterian Hospital in the City*

of New York as Assignee of *Kenneth Mandel v. Liberty Mutual Insurance Company*, supra, *Zappone v. Home Ins. Co.*, 55 N.Y.2d 131, 432 N.E.2d 783, 447 N.Y.S.2d 911 (1982). The exhaustion of policy defense is applicable even if funds were available at the time the bills were received.

The premise for the foregoing is based on the following: i) the Legislature's mandate that an insurer's basic obligation for No-fault claims shall not exceed \$50,000; ii) that the eligible injured person received the benefit of the policy limits; iii) that additional coverage could have been obtained by the insured; and iv) that an arbitrator lacks authority to increase the amount of statutorily and contractually limited coverage. See AAA Assessment No.: 17991R2123014 - Yu Shun Acupuncture PC and USAA Insurance Company (Master Arbitrator Dachs); AAA No.: 412011029235 - Alan F. SanFillippo, Jr., and USAA Insurance Co., (Master Arbitration Award, Rickman; 2010); AAA No.: 412013020507 - Hamilton Medical Diagnostics PC and USAA (Arb. Russo); AAA No.: 412020002809 - Suranganee De Lenerolle, MD v. NYCM (Arb. Sawits); AAA No.: 412009041706 - Nara Rehab Medical, P.C. v GEICO (Arb. Jacob); AAA No.: 412009048975 - Bergen Anesthesia Pain v. GEICO (Arb. Maslow); AAA No.: 412011001420 - Bergen Anesthesia Pain v. GEICO (Arb. Wolf); AAA No.: 412010006496 - New York Spine Specialist v. GEICO (Arb. Rybacki); AAA No.: 412010058560 - Bronx Chiropractic Services, PC and Lancer Insurance Company (Arb. Charkey); AAA No.: 412012087263 - Applicant v. GEICO (Arb. Balzer); AAA No.: 412011074862 - Bronx Chiropractic Services, PC v. United Services Automobile Association (Arb. Talay); AAA No.: 412012002823 - Innovative Chiropractic Service, PC v. 21st Century Insurance Company (Arb. DiGirolomo); *Allstate v. Demoura*, 2011 NY Slip Op 50430(U); *Big Apple Chiropractic and United Services Automobile Association*, AAA No.: 412013043100 (Arb. Adler); and AAA No.: 412013043100 - *Big Apple Chiropractic, P.C. and United Services Automobile Association* (Arb. Adler); and AAA No. 412013020507 - *Hamilton Medical Diagnostics PC and USAA* (Arb. Russo).

I make not of Alleviation case law and do not follow it.

The documents submitted support the exhaustion of the policy. The 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 Madison

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

08/25/2021
(Dated)

Mary Anne Theiss

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:
4cfe5439a41cb2e969f3b3144987e858

Electronically Signed

Your name: Mary Anne Theiss
Signed on: 08/25/2021