

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Shoulder Knee Orthopedics
(Applicant)

- and -

Hartford Insurance Company
(Respondent)

AAA Case No. 17-20-1187-5603

Applicant's File No. 3101549

Insurer's Claim File No. Y79AF82671

NAIC No. 30104

ARBITRATION AWARD

I, Gary Peters, 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 05/20/2022
Declared closed by the arbitrator on 05/20/2022

Elvira Messina from Law Offices of Andrew J. Costella Jr., Esq. participated in person for the Applicant

Laura Monteleone from Hartford Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$10,807.53**, 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 was a 71 year old male who was involved in a motor vehicle accident on 1/21/20. He sustained multiple bodily injuries and came under the care of various medical providers.

Applicant is seeking payment for medical services including an operative procedure.

Respondent denied payment of the claim for lack of medical necessity based on its Independent Medical Examination Report and maintained that its policy has been exhausted.

4. Findings, Conclusions, and Basis Therefor

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 record of the hearing and I have reviewed the documents contained therein. Any documents submitted after the hearing or at the hearing that have not been entered in the Electronic Case Folder as of the date of this award, will be listed immediately below this language and forwarded to the American Arbitration Association at the time this award is issued for inclusion.

As stated above, the Assignor was a 71 year old male who was involved in a motor vehicle accident on 1/21/120. He came under the care of the Applicant's facility for injuries to his right shoulder.

It is the Respondent's position that the policy has been exhausted and that no further benefits were due.

It is well settled that when, a carrier "has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease." *Presbyterian Hosp. in the City of New York v. Liberty Mut. Ins. Co.*, 216 A.D.2d 448, 628 N.Y.S.2d 396; *see also*, *Champagne v. State Farm Mut. Auto. Ins. Co.*, 185 A.D.2d 835, 837, 586 N.Y.S.2d 813; *see also* *Presbyterian Hosp. in the City of New York v. Empire Ins. Co.*, 220 A.D.2d 733, 633 N. Y.S.2d 340. Further, "the failure to disclaim coverage does not create coverage which the policy was not written to provide;" *Zappone v. Home Ins. Co.*, 55 N.Y.2d 131, 134, 447 N. Y.S.2d 911, 432 N.E.2d 783, "since that defense is never waived by a failure to assert it in a notice of disclaimer;" *Schiff Assocs. v. Flack*, 51 N.Y.2d 692, 700, 435 N.Y.S.2d 972, 417 N.E.2d 84; *see*, *Liberty Mut. Ins.Co. v. Aetna Cas. and Sur. Co.*, 168 AD2d 121, 571 N.Y.S.2d 735.

The Appellate Division in *Hospital for Joint Diseases v. Hertz Corp.*, 2005 NY Slip Op 07932 [22 AD3d 724], decided on October 24, 2005, allowed Defendant to modify the judgment after Plaintiff had been awarded summary judgment and entered judgment in the amount of \$52,841.88. The court in *Hospital for Joint Diseases* followed well settled precedent holding that "where, as hear, an insurer has paid the full monetary limits set forth in the policy its duties under the contract of insurance cease." (citing *Presbyterian*

Hospital in City of N.Y. v. Liberty Mut. Inc. Co., 216 AD2d 488[1995]; *Hospital for Joint Disease v.State Farm Mut. Auto Ins. Co.*, 8 AD3d 533, 534 [2004]; *New York Presbyt. Hospital v. Progressive Cas. Ins. Co.*, 5 AD3d 568, 570 [2004])

It is well settled that "where, as in the instant case, an insurer has paid the full monetary limits set forth in the policy its duties under the contract of insurance cease."(citing *Presbyterian Hospital in City of N Y. v. Liberty Mut. Inc. Co.*, 216 AD2d 488(1995); *Hospital for Joint Disease v. State Farm Mut. Auto Ins. Co.*, 8 AD3d 533, 534 (2004); *New York Presby.. Hospital v. Progressive Cas. Ins. Co.*, 5 AD3d 568, 570 (2004))

Counsel for the Applicant relied on the case of Alleviation Medical Services, P.C. v. Allstate Insurance Company, 55 Misc3d 44, 45 (A.T.-2nd Dept.-2017), in which the Court held that fully verified claims are payable in the order that they are received.

The Respondent's representative relied on the case of Harmonic Physical Therapy, P.C. v. Praetorian Insurance Company, 47 Misc3d 137(A) (A.T.-1st Dept.-2015), in which the Court held that an insurer may pay other providers' claims received after the denial of a previously submitted claim of a different provider.

I find that the policy limits have been exhausted. That based upon the above caselaw Respondent cannot be required to pay no-fault benefits above the applicable policy limits. Respondent paid the applicable policy limits to various medical providers. Accordingly, this claim is denied.

The Appellate Division, 2nd Department has held that the defense of policy exhaustion is a non-precludable defense that can be asserted at any time, regardless of whether timely denials were issued. *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 2004 NY Slip Op 08669 [12 AD3d 579] (App. Div., 2nd Dept,2004).

The Appellate Division has made it clear that the policy exhaustion defense is one that cannot be waived by an insurer's failure to timely deny. *see Presbyterian Hosp. in the City of New York v. Empire Ins. Co.*, 220 A.D.2d 733, 633 N.Y.S.2d 340; *see also Presbyterian Hosp. in the City of New York v. Liberty Mut. Ins. Co.*, 216 AD2d 448, 628 N.Y.S.2d 396.

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I am persuaded by the reasoning in the Harmonic case. As I find that the Respondent met the burden of proof for their exhaustion of benefits defense; the Respondent's denial is sustained.

Accordingly, for the reasons as stated above, I find that the Respondent is not required to pay for additional medical bills and the 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 NASSAU

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

06/18/2022
(Dated)

Gary Peters

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:
a33609274169ef5880c11e43d73bf8b1

Electronically Signed

Your name: Gary Peters
Signed on: 06/18/2022