

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Health East Ambulatory Surgical Center  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-22-1234-9937
Applicant's File No.	HE-21-078
Insurer's Claim File No.	0477114690101053
NAIC No.	22055

**ARBITRATION AWARD**

I, Susan Mandiberg, 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: The EIP

1. Hearing(s) held on 07/20/2022  
Declared closed by the arbitrator on 07/20/2022

Chrissy Grigoropoulos, Esq. from The Grigoropoulos Law Group, PLLC participated in person for the Applicant

Eric Schechner, Claim Representative from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$6,375.07**, 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 30-year-old female EIP was involved in the instant motor vehicle accident on 10/24/18. Presently in dispute is billing for facility fees billed in conjunction with left knee surgery performed on 3/13/19. Applicant contends that it is entitled to reimbursement for the instant billing. Respondent asserts that the policy has been exhausted and as a result, no payment is due.

4. Findings, Conclusions, and Basis Therefor

This case involves billing for facility fees billed in conjunction with left knee surgery performed on 3/13/19. The services were rendered following a motor vehicle accident that took place on 10/24/18. As a threshold matter, Respondent argues that the policy has been exhausted and that no payment is due. The case was decided after due consideration of the arguments of the parties via Zoom, and after a thorough review of the submissions and the documents contained in the electronic case folder maintained by the American Arbitration Association, which are incorporated by reference herein.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered...The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. In addition, Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Orthopedic Rehabilitation a/a/o "I.B." v. Country-Wide Insurance Co., AAA Case No. 17-R-991- 14272-3, stated, in relevant part, that "the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at [his/her] decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents".

It is well-settled that a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. *Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v General Assurance Co.*, 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2nd Dept., June 2, 2006; See: Insurance Law §5106 a, *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742, 774 N.Y.S.2d 564 (2004); *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [2003 NY Slip Op 51701U (App. Term, 2nd & 11th Jud Dists.)]. See also: 11 NYCRR §65-1.1, *Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co.*, 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006. Based upon the evidence submitted, I find that the Applicant has established its prima facie case.

As a threshold matter, Respondent argues that the policy has been exhausted and that no payment for this billing is due. It is therefore noted that this case is linked to three other cases that involved this same EIP, for services stemming from the same motor vehicle accident as in the instant matter, which involved Respondent's defense of exhaustion of the policy. See: AAA Case #17-19-1118-3546 (Arbitrator Inez Beyrer); AAA Case #17-19-1119-2564 (Arbitrator Inez Beyrer); and AAA Case #17-19-1125-9246 (Arbitrator Carolynn Terrell-Nieves), respectively.

All of the aforementioned cases upheld Respondent's defense of policy exhaustion and involved the identical issue of policy exhaustion, as in the instant matter. Therefore, I find that the doctrine of collateral estoppel is applicable to the billing presently in dispute. According to Black's Law Dictionary, sixth ed., 1990, the doctrine of collateral estoppel is defined as follows: "Prior judgment between the same parties on different cause of action is an estoppel as to those matters in issue or points controverted, on

determination of which finding or verdict was rendered" (Citation omitted).

Furthermore, the doctrine of collateral estoppel precludes a party from re-litigating in a subsequent action or proceeding, an issue that was raised in a prior action or proceeding and decided against that party, whether or not the tribunals or causes of action are the same. See: *Ryan v. New York Telephone*, 62 N.Y.2d 494, 478 N.Y.2d 823. To invoke the doctrine of collateral estoppel, there must be an identity of issues which has been decided in the prior action (and which is decisive in the present action) and there must have been a full and fair opportunity to contest the decision now said to be controlling. See: *Gilberg v. Barbieri*, 441 N.Y.S.2d 49. In addition, 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 (4th Dept. 2009).

In this case, the same issue regarding the issue of policy exhaustion was decided in the aforementioned Arbitration Awards. In addition, it has been held that the doctrines of res judicata and collateral estoppel apply to Arbitration Awards, "including those rendered in disputes over no-fault benefits, and will bar re-litigation of the same claim or issue". Furthermore, the court 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 (3rd Dept. 1987).

Even if, *arguendo*, the linked Awards were not considered herein, I nonetheless find that Respondent's evidence regarding its policy exhaustion is both credible and persuasive. Notice is further taken that 11 N.Y.C.R.R. §65-4.10(a) provides that an Arbitrator's award is subject to vacatur, in part, based upon the following grounds: "(1) any ground for vacating or modifying an award enumerated in article 75 of the Civil Practice Law and Rules (an Article 75 proceeding), except the ground enumerated in CPLR subparagraph 7511(b)(1)(iv) (failure to follow Article 75 procedure); (2) that the award required the insurer to pay amounts in excess of the policy limitations for any element of first-party benefits; provided that, as a condition precedent to review by a Master Arbitrator, the insurer shall pay all other amounts set forth in the award which will not be the subject of an appeal, as provided for in section 65-4.4 or section 65-4.5 of this Subpart." Moreover, the New York Court of Appeals - in the case of *Brijmohan v. State Farm Ins. Co.*, 92 N.Y.2d 821 (1998) - held that an Arbitrator's award in excess of the policy limits constituted an award in excess of the Arbitrator's powers in violation of CPLR §7511(b)(1)(iii). It is therefore noted that CPLR §7511(b)(1) provides that an Arbitrator's award "shall be vacated" if the rights of a party are prejudiced by: "... (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made." This finding was echoed in the cases of *Sagona v. State Farm Ins. Co.*, 218 A.D.2d 660 (App. Div., 2nd Dept., 1995); *Allstate Ins. Co. v. Silver*, 225 A.D.2d 690 (App. Div., 2nd Dept., 1996); *State Farm Ins. Co. v. Credle*, 228 A.D.2d 191 (App. Div., 1st Dept., 1996); *Countrywide Ins. Co. v. Sawh*, 272 A.D.2d 245 (App. Div., 1st Dept., 2000); *Spears v. N.Y.C. Transit Authority*, 262 A.D.2d 493 (App. Div., 2nd Dept.,

1999); Mele v. General Accident Ins. Co., 198 A.D.2d 731 (App. Div., 3rd Dept., 1993); and Allstate Ins. Co. v. Auto One Ins. Co., 35 Misc.3d 140(A) (App. Term, 2nd Dept., 2012), respectively.

Based upon the foregoing, for the reasons set forth herein, and after a thorough review of the totality of the credible evidence, I find that the Respondent's defense should be sustained. In the instant matter, Respondent has submitted proof regarding the policy exhaustion which, in my opinion, credibly and reasonably establishes its defense. I therefore find that Respondent's evidence is both credible and persuasive.

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

07/22/2022  
(Dated)

Susan Mandiberg

**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:**  
6bf95b364ce733adac733807b6effd3a

### **Electronically Signed**

Your name: Susan Mandiberg  
Signed on: 07/22/2022