

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PMR Medical P.C
(Applicant)

- and -

Country-Wide Insurance Company
(Respondent)

AAA Case No. 17-22-1264-4329

Applicant's File No. N/A

Insurer's Claim File No. 000345567 001

NAIC No. 10839

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: Y.S.

1. Hearing(s) held on 07/31/2023
Declared closed by the arbitrator on 07/31/2023

Rajesh Barua, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)
participated virtually for the Applicant

Kristina Hernandez, Esq. from Jaffe & Velazquez, LLP participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$648.24**, 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 July 12, 2019, the Assignor/Eligible Injured Party, a 55-year-old female, was, by history, involved in a motor vehicle accident. In dispute is the administering of anesthesia provided by Dr. Rytis Valskys of PMR Medical PC for a right sided laminectomy L5-S1 and discectomy performed on February 24, 2022 and billed pursuant CPT 00670 at \$648.24. Following receipt of the claim, the Respondent issued a timely denial on the basis of the independent medical examination of Dr. Magda Fahmy which terminated benefits as of March 1, 2020. The Respondent then issued a general global denial dated March 21, 2022 on the basis of the exhaustion of policy limits. This is the primary issue.

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 July 12, 2019, the Assignor/Eligible Injured Party, a 55-year-old female, was, by history, involved in a motor vehicle accident. In dispute is the administering of anesthesia provided by Dr. Rytis Valskys of PMR Medical PC for a right sided laminectomy L5-S1 and discectomy performed on February 24, 2022 and billed pursuant CPT 00670 at \$648.24.

Specific Denial. Following receipt of the claim, the Respondent issued a timely denial on the basis of the independent medical examination of Dr. Magda Fahmy which terminated benefits as of March 1, 2020.

General Denial. The Respondent then issued a general global denial dated March 21, 2022 on the basis of the exhaustion of policy limits.

Policy Exhaustion. The Respondent has submitted a Declaration Page documenting a maximum of \$50,000 in applicable No-Fault coverage of Mandatory Personal Injury Protection with no additional applicable coverage. In addition to the General Denial, the Respondent has submitted a payment ledger which establishes the payments of \$50,000.00 in medical payments with the final payment issued on October 20, 2021. The \$50,000 policy has been exhausted with no offsets or deductible applied. *Normile v. Allstate Insurance Co.*, 60 N.Y.2d 1003, (1983), *aff'd*, 87 A.D.2d 721, 448 N.Y.S.2d 907 (3d Dept. 1982).

In *Harmonic Physical Therapy, P.C. v. Praetorian Ins. Co.* 47 Misc.3d 137(A) (2015), the Appellate Term First Department held that a Carrier was not precluded by 11 NYCRR 65-3.15 from paying other providers' legitimate claims subsequent to the denial of the plaintiff's claims. If an arbitrator or Court then overturns the initial basis of the denial, the claim is only deemed verified for the priority of payment rule as of the date of that decision. This was the finding in *Country-Wide Insurance v. Walter E. Mendoza Chiropractic, P.C.*, 2020 NY Misc. LEXIS 1960, at 5 (Sup. Ct. NY, New York County

2020) in which an arbitrator found that the Carrier had not sustained its burden of proof on the issue in its earlier denial of a claim based on medical necessity.

Therefore, as a finding of fact, the Respondent has established the exhaustion of coverage. 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). This Arbitrator, therefore, need not address the denial based on the independent medical examination.

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 DUE TO THE EXHAUSTION OF THE APPLICABLE COVERAGE.

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 NY

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.

08/28/2023
(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:
a23ff829376b414787addfe90c848ffc

Electronically Signed

Your name: Kent Benziger
Signed on: 08/28/2023