

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Health and Comfort Rx Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-22-1271-2789
Applicant's File No.	LIP-22661
Insurer's Claim File No.	8745447170000001
NAIC No.	22055

ARBITRATION AWARD

I, Elyse Balzer, 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: PNU

1. Hearing(s) held on 10/18/2023
Declared closed by the arbitrator on 10/18/2023

Lee-Ann Trupia, Esq., of counsel from Law Offices of Ilya E Parnas P.C. participated virtually for the Applicant

Kimberly Siegel, Esq from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,388.39**, 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

This arbitration seeks payment for prescription medication dispensed on 9/21/22 to the 26-year-old female eligible injured person, PNU, for injuries sustained as the driver of a vehicle involved in an accident on 12/28/21.

The issue is whether this claim must be denied due to policy exhaustion.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted via ZOOM, as all arbitration hearings have been conducted telephonically or via ZOOM since March 15, 2020 due to the COVID-19 pandemic.

4. Findings, Conclusions, and Basis Therefor

On 9/21/22, at the order of Dr. A. Sinha, applicant dispensed prescription medication (aspirin; cephalixin; naproxen esomeprazole) to PNU.

Applicant's claim was initially denied based upon an IME conducted on 8/10/22 by Dr. Neil Watnik.

By the time of the arbitration hearing, respondent maintained that the policy was exhausted.

Respondent presented:

The declarations page for Policy No. 6087-94-38-89, coverage period 11/25/21 through 5/25/22, naming PNU as the insured and showing that a maximum of \$50,000.00 was available as no-fault benefits per person per occurrence:

A no-fault PIP ledger showing that \$49,942.46 had been paid in medical benefits:

A consent award, dated 4/10/23 in a case of "Triborough ASC aao PNU & GEICO, AAA Case No. 17-22-1245-8785, in the principal amount of \$57.54.

The consent award indicates that the case was settled on 4/10/23, the same date as the hearing at which this arbitration case was held.

It has been held that "[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" (*Presbyterian Hosp. in City of N.Y. v Liberty Mut. Auto Ins. Co.*, 216 AD2d 448; see *Hospital for Joint Diseases v State Farm Mut. Auto Ins. Co.*, 8 AD3d 533, 534; *New York & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, 5 AD3d 568, 570)." *Hospital for Joint Diseases v. Hertz Corp.*, 22 AD3d 724, 2005 NY Slip Op 07932 (App Div, 2d Dep't 2005).

An insurer is not required to pay a claim where the policy limits have been exhausted. *Mount Sinai Hospital v. Zurich American Ins. Co.*, 15 AD3d 55, 790 NYS2d 216 (2d Dep't 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 AD2d 448, 628 NYS2d 396 (2d Dep't 1995).

It has been stated that "(t)he cessation of those duties applies to a claim that was improperly denied, Nyack Hosp. v. General Motors Acceptance Corp., 8 NY3d 294, 832 NYS2d 880 (2007), even where the Denial of Claim (NF-10) form is not issued within 30 days." New York and Presbyterian Hosp. v. Allstate Ins. Co., 12 AD3d 579, 786 NYS2d 68 (2d Dep't 2004); Crossbridge Diagnostic Radiology v Encompass Ins., 24 Misc.3d 134(A), 2009 NY Slip Op 51415(U)" (App Tm, 2nd, 11th & 13th Dists 2009).

A carrier may present sufficient evidence to establish that the subject policy limits for personal injury protection benefits had been exhausted by prior claims. Hospital for Joint Diseases v. State Farm Mut. Auto Mut Ins. Co., 8 AD3d 533, 2004 NY Slip 05413 (App Div, 2nd Dep't 2004).

Where an insurer demonstrates that it paid a claim up to the policy limits, it is not obligated to pay the claim in full, despite an untimely denial. New York & Presbyterian Hosp. v. Progressive Cas. Ins. Co., 5 AD3d 568, 774 NYS2d 72 (2d Dep't 2004).

Based on the proof presented, I find that respondent has proven exhaustion.

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 NY

SS :

County of Westchester

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

10/18/2023

(Dated)

Elyse Balzer

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:
0fabd9abc0f1dec6c415c876f24b4cac

Electronically Signed

Your name: Elyse Balzer
Signed on: 10/18/2023