

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Valor Chiropractic Wellness, PC
(Applicant)

- and -

Farm Family Casualty Insurance Company
(Respondent)

| | |
|--------------------------|------------------|
| AAA Case No. | 17-23-1282-2448 |
| Applicant's File No. | BS-10659-1803472 |
| Insurer's Claim File No. | 31-V-2PK114-1 |
| NAIC No. | 13803 |

ARBITRATION AWARD

I, Neal S Dobshinsky, 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: J Doe

1. Hearing(s) held on 11/22/2023
Declared closed by the arbitrator on 11/22/2023

Steven Neuwirth from Sanders Grossman Aronova PLLC participated virtually for the Applicant

No one attended the hearing from Farm Family Casualty Insurance Company participated by written submission for the Respondent

2. The amount claimed in the Arbitration Request, **\$150.51**, 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 2/18/15, J Doe saw Applicant for an initial chiropractic evaluation and treatment. On 8/7/15, Doe saw Applicant for a follow-up visit and treatment. Applicant sought payment for the office visits and treatments.

There is no denial of claim. Applicant requested arbitration on 1/12/23.

On 2/28/23, a claims manager with Insurer responded to Applicant's arbitration request. "Please be advised that our \$150,000 PIP policy is exhausted and no further payments will be made." Included is a copy of the PIP ledger and declaration page.

Are the no-fault benefits exhausted?

4. Findings, Conclusions, and Basis Therefor

I have read and considered the materials the parties submitted to the AAA ADR case file. I have heard and considered the arguments of Applicant's counsel. Insurer did not appear. At my request, a member of the AAA Arbitrator Support group reached out to Insurer, but no one joined the hearing on behalf of Insurer. I find as follows:

Background

It is claimed that on 8/9/13, J Doe, then 42 years old, was injured in a motor vehicle accident. Doe is a named insured under a policy of insurance with respondent Insurer. Doe claimed she was injured. She sought care and treatment. Doe was eligible for no-fault insurance benefits from Insurer.

On 2/18/15, Doe saw Kentia Jean-Charles, DC, a chiropractor with and owner of applicant Valor Chiropractic Wellness, for an initial evaluation. Jean-Charles evaluated and treated Doe.

On 8/7/15, Jean-Charles re-evaluated and treated Doe.

Applicant's Claims and Insurer's Contention

Applicant, as Doe's assignee, submitted two separate claims to Insurer for no-fault benefits for payment for the services rendered. Applicant billed \$89.42 for the initial evaluation and treatment on 2/18/15. Applicant mailed the first claim on 4/14/15. Applicant billed \$61.09 for the follow-up visit and treatment on 8/7/15. Applicant mailed the second claim on 8/25/15.

Insurer did not deny either claim. Applicant requested arbitration on 1/12/23.

On 2/28/23, a claims manager with Insurer responded to Applicant's arbitration request. "Please be advised that our \$150,000 PIP policy is exhausted and no further payments will be made." Included is a copy of the PIP ledger and declaration page.

The only issue argued and submitted for determination is whether the no-fault benefits are exhausted. All other issues were deemed waived.

Claim Processing and Precludable Defenses

Under the regulations, "[w]ithin 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part." 11 NYCRR 65-3.8 (c). The 30-day period may be extended by a timely demand by the insurance company for further verification of a claim. 11 NYCRR 65-3.5 (b); 65-3.6 (b). Such a demand must be made within 15 business days of receipt of the prescribed verification

forms. 11 NYCRR 65-3.5 (b). If the demanded verification is not received within 30 days, the insurance company must issue a follow-up request within 10 days of the insured's failure to respond. 11 NYCRR 65-3.6 (b). A claim need not be paid or denied until all demanded verification is provided. 11 NYCRR 65-3.8 (b) (3). No-fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which includes verification of all relevant information requested pursuant to 11 NYCRR 65-3.5.

An insurer may toll or extend its time to pay a claim by timely demanding an EUO, or a medical examination, or verification. *Hospital for Joint Diseases v New York Cent. Mut. Fire Ins. Co.*, 44 AD3d 903 [2d Dept 2007]; 11 NYCRR 65-3.5 [c]; 65-3.8 [a] [1]. However, a no-fault insurer that "fails to pay or deny a claim within the requisite 30 days . . . is subject to 'substantial consequences,' namely, preclusion 'from asserting a defense against payment of the claim.' The only exception is where an insurer raises lack of coverage as a defense" (internal citations omitted). *Viviane Etienne Med. Care v Country-Wide Ins. Co.*, 25 NY3d 498, 506 [2015].

Insurer did not dispute that Applicant timely submitted its claims. Insurer did not toll or extend its time to pay or deny either claim. Insurer did not pay or deny Applicant's claims.

What Coverage Is There?

In support of its policy exhaustion defense, Insurer submits the declarations portion of the insurance policy. J Doe is a named insured. In the personal injury protection (no-faults) benefits section of the declarations, the policy provides for mandatory basic coverage with a limit of \$50,000 and additional PIP benefits of \$100,000. There is a \$200.00 deductible.

By law and regulation, under the mandatory personal injury protection endorsement, first party benefits are payments equal to basic economic loss less the amount of any permitted reductions. Basic economic loss consists of medical expense, work loss, other expense and, when death occurs, a death benefit. Basic economic loss shall not exceed \$50,000. 11 NYCRR 65-1.1.

To meet its obligations, Insurer is required to pay benefits which together with permitted reductions, offsets, and any deductible total \$150,000.

Exhaustion of the Monetary Limits of the Insurance Coverage

In its written submission, dated 2/28/23, in response to Applicant's arbitration request, Debbi Cuttita, a claims manager with Insurer wrote: "Please be advised that our \$150,000 PIP policy is exhausted and no further payments will be made." I have included a copy of the PIP ledger and dec page. Below is a breakdown of payments.

Medical/lost wage payments: \$133,562.20

Wage offsets: \$ 16,437.80

Total: \$150,000.00"

In addition to the declarations page, the Insurer submits 14 pages of a claim check payments ledger. Each of the 14 pages is dated 2/28/23, and, although the information on each page appears to be different, each page is numbered page 1 of 1. The ledger includes as part of the title "coverages: APIP, PIP, PIP-Loss of Income. The first of the 14 pages shows the column headings: "check issued," "check number," "check amount," "claimant name," "pay to," and "in payment of." Some of the "in payment of" entries are blank; others are truncated.

The 14th page shows a total of \$133,562.20. There is nothing that shows the wage offsets or how such offsets were calculated.

Caselaw holds that "where . . . an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease." The evidence submitted by the defendant was sufficient 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. Ins. Co.*, 8 AD3d 533 [2d Dept 2004].

A defense that the coverage limits of the policy have been exhausted may be asserted by an insurer despite its failure to issue a denial of claim on that ground. *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 12 AD3d 579, 580 [2004]; *Alleviation Medical Services, P.C. v Allstate*, 55 Misc3d 44, 47 [App. Term 2, 11 and 13 Jud Dists 2017].

An insurer is not required to pay a no-fault claim where the policy limits have been properly exhausted by prior claims. *Hospital for Joint Diseases v State Farm Mut. Auto. Ins. Co.*, 8 AD3d 533, 534 [2d Dept 2004].

Here the evidence in Insurer's submission is insufficient to establish its policy exhaustion defense. Indeed, Insurer has submitted no evidence in support of any non-precludable defense.

Conclusion

Insurer failed to establish that the applicable no-fault policy limit is exhausted.

Based on the parties' submissions, their arguments, the law, the regulations, and the weight of the credible evidence, I conclude that Applicant is entitled to payment.

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 applicant is AWARDED the following:

A.

| Medical | | From/To | Claim Amount | Status |
|---------|---------------------------------|---------------------|--------------|-------------------|
| | Valor Chiropractic Wellness, PC | 02/18/15 - 02/18/15 | \$89.42 | Awarded: \$89.42 |
| | Valor Chiropractic Wellness, PC | 08/07/15 - 08/07/15 | \$61.09 | Awarded: \$61.09 |
| Total | | | \$150.51 | Awarded: \$150.51 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/12/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Insurer shall compute and pay interest from the accrual date noted above-the date on which Applicant requested arbitration by filing with the AAA-at a rate of 2% per month, simple interest, calculated on a pro-rata basis using a 30-day month and ending with the date of payment subject to the provisions of 11 NYCRR 65-3.9.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Insurer shall pay Applicant's attorney a fee in an amount equal to 20% of the total amount of the benefits plus interest awarded in this arbitration, subject to the provisions of 11 NYCRR 65-4.6.

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NJ

SS :

County of Monmouth

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

12/14/2023
(Dated)

Neal S Dobshinsky

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:
b9da31ffe0a60651de5ea3a809d29d0f

Electronically Signed

Your name: Neal S Dobshinsky
Signed on: 12/14/2023