

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Milestone Chiropractic PC
(Applicant)

- and -

NYS Office of General Services
(Respondent)

AAA Case No. 17-23-1303-5357

Applicant's File No. 23-003074

Insurer's Claim File No. 20836573

NAIC No. Self-Insured

ARBITRATION AWARD

I, Lester Hill, 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: EIP

1. Hearing(s) held on 12/22/2023
Declared closed by the arbitrator on 12/22/2023

Robert Bott from The Licatesi Law Group, LLP participated virtually for the Applicant

Ed Ryan from McDonnell Adels & Klestzick, PLLC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$434.65**, 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

Were the claims for chiropractic treatment provided to the EIP from September 15, 2022 through October 12, 2022 reimbursable based upon the assertion that the policy limits are exhausted? The 45-year-old male EIP was involved in a motor vehicle accident on October 28, 2020 and received treatment for injuries sustained in the accident.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the claims for chiropractic treatment provided to the EIP from September 15, 2022 through October 12, 2022 were reimbursable based upon the assertion that the policy limits are exhausted.

I have reviewed the documents contained in the electronic case folder as of December 22,

2023. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on December 22, 2023.

An Applicant establishes a prima facie showing of its entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and the payment of No-Fault benefits were overdue. *Westchester Medical Center v. Lincoln General Ins. Co.*, 60 A.D. 3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009).

The EIP was involved in a motor vehicle accident on October 28, 2020. Thereafter, the EIP obtained treatment from multiple medical providers for injuries sustained in the accident.

The applicant provided chiropractic treatment to the EIP from September 15, 2022 through October 12, 2022. The applicant timely submitted claims for these services.

The respondent denied the claims based upon the IME conducted by Dr. Jeffrey Ritholtz on July 26, 2021.

The motor vehicle accident occurred when a New York State Police Vehicle struck a boulder which struck the pedestrian EIP.

The respondent submitted proof that the vehicle which struck the EIP was part of the Self Retained Auto Program run by the State of New York for New York State police vehicles. The respondent submitted proof that the applicable policy limits are \$50,000 per person for no-fault benefits.

The respondent submitted evidence that as of January 13, 2022 the applicable policy limits of \$50,000.00 were exhausted. I am satisfied by the proof submitted that the policy limits were exhausted as of that date.

The court has held that the insurer is relieved of further financial responsibility for payment based upon policy exhaustion even if a denial was not issued within 30 days. *New York and Presbyterian Hospital v. Allstate Ins. Co.*, 786 N.Y.S.2d 68 (2d Dept. 2004).

Applicant raised the issue of the decision in *Alleviation Medical Services v. Allstate Insurance Co.*, 55 Misc 3rd 44 (App Term 1st Dept. 2017) wherein the court ruled that if an insurer denies a claim, such as a lack of medical necessity, and the defense is subsequently rejected, at trial or arbitration, the policy exhaustion issue is not a defense.

Following this principle would effectively preclude the insurer from defending claims based upon a lack of medical necessity since a subsequent decision rejecting their defense of a lack of medical necessity would expose the insurer to awards in excess of the contracted insurance policy. I find this decision contrary to the structure of No-Fault Regulations and find that the decision in Harmonic Physical Therapy v. Praetorian Insurance Co., 47 Misc 3 137(A) (App Term 1st Dept. 2015) is the correct interpretation regarding the issue of policy exhaustion.

Accordingly, applicant's claims are denied in their 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 NY

SS :

County of Nassau

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

12/22/2023
(Dated)

Lester Hill

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:
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Electronically Signed

Your name: Lester Hill
Signed on: 12/22/2023