

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Active Life Chiropractic PC
(Applicant)

- and -

Midvale Indemnity Company
(Respondent)

AAA Case No. 17-23-1305-4193

Applicant's File No. ACT062623003

Insurer's Claim File No. 01005597593

NAIC No. 27138

ARBITRATION AWARD

I, Victoria Thomas, 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: Assignor

1. Hearing(s) held on 12/11/2023
Declared closed by the arbitrator on 12/11/2023

Ralph Caio from Economou & Economou PC participated virtually for the Applicant

Glenda Cunningham from Claudia P. Lovas & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,027.46**, 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

Did Respondent prove policy exhaustion?

The Assignor, 'DT' was involved in a motor vehicle accident on 12/27/22. Applicant billed for X-Rays conducted on 3/27/23. Respondent argues that the policy is exhausted.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the file with regard to this matter maintained by the AAA in the eCenter. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim, by the submission of a completed NF-3 form documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Policy Exhaustion

In the present case, Respondent asserted that the subject policy limit of \$50,000 is exhausted and that it is not obligated to pay the balance of any additional fees subject to this arbitration. In support of its policy exhaustion defense, it relied on the declaration page, payment log, and work loss payments. When an insurer "has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease" See, *Allstate Ins. V. DeMoura*, 2011 NY Slip OP 50430(U)[30 Misc3d 145(A)], citing *Countrywide Ins. Co. v Sawh*, 272 AD2d 245 [2000]). An insurer's failure to issue a denial of the claim within 30 days does not preclude a defense that the coverage limits of the subject policy have been exhausted. See, *York and Presbyterian Hospital v. Allstate Ins. Co.*, 12 A.D.3d 579, 786 N.Y.S.2d 68 (2d Dept. 2004); *Crossbridge Diagnostic Radiology v. Encompass Insurance*, 24 Misc.3d 134(A), 890 N.Y.S.2d 368 (Table), 2009 N.Y. Slip Op. 51415(U), 2009 WL 1911909 (App. Term 2d, 11th & 13th Dists. June 23, 2009).

The insurer's failure to issue a denial of the claim within 30 days does not preclude a defense that the coverage limits of the subject policy have been exhausted. *New York and Presbyterian Hospital v. Allstate Ins. Co.*, 579, 786 N.Y.S.2d 68 (2d Dept. 2004). While a policy exhaustion claim is not precluded because of an untimely denial, the insurer must still make out a triable issue of fact in support of the defense. *Westchester Medical Center v. Progressive Casualty Ins. Co.*, 2009 N.Y. Slip Op. 31556(U), 2009 WL 2160548 (Sup. Ct. Nassau Co., Ute Wolff Lally, J., July 7, 2009).

In *Harmonic Physical Therapy, P.C. v Praetorian Ins. Co.*, 47 Misc. 3d (App. Term 1st Dept., Decided on April 14, 2015), the court held that an insurer was not precluded by 11 NYCRR 65-3.15 from paying other providers' legitimate claims subsequent to the denial of the providers claims and that adopting the provider's position, which would require defendant to delay payment on uncontested claims, or on binding arbitration awards - pending resolution of plaintiff's disputed claim - "runs counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims" (*Nyack Hosp. v General Motors Accept. Corp.*, 8 NY3d at 300). Judge Miles upheld the exhaustion of policy defense in Harmonic.

I agree with the court's reasoning and decision in *Harmonic*. I find that the coverage limits have been exhausted. I do not agree with the court's holding in *Alleviation Med. Servs., P.C. v Allstate Ins. Co.*, 55 Misc. 3d 44, App. Term., 2 Dept. (March 29, 2017) and the Respondent is under no obligation to make further PIP payments.

After reviewing the entire record and after careful consideration of the parties' oral arguments, I find that Respondent submitted sufficient and credible evidence to establish that the policy limit of \$50,000 is exhausted.

Therefore, Applicant's claims are 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 Nassau

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

12/31/2023
(Dated)

Victoria Thomas

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:
27fba7828f9efb7707fccd064f2a9f5d

Electronically Signed

Your name: Victoria Thomas
Signed on: 12/31/2023