

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hamilton Surgical Supplies, LLC
(Applicant)

- and -

Esurance Insurance Company
(Respondent)

AAA Case No. 17-24-1336-2691

Applicant's File No. 174930

Insurer's Claim File No. 230323352-002

NAIC No. 25712

ARBITRATION AWARD

I, Ellen Cutler-Igoe, 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 08/20/2024
Declared closed by the arbitrator on 08/20/2024

Michael Spector, Esq. from The Odierno Law Firm P.C. participated virtually for the Applicant

Thomas Cooke, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$928.09**, 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

Applicant seeks payment of charges for a LSO supplied to Assignor, a 22-year-old female driver, on September 5, 2023 as a result of injuries Assignor sustained following a motor vehicle accident that occurred on April 18, 2023. Respondent timely denied payment of Applicant's charges predicated upon the findings of its consultant, Dr. Anthony Spataro's, Independent Medical Examination dated July 20, 2023 with a correlating global termination of Assignor's orthopedic related no-fault benefits as of August 4, 2023. For hearing purposes, however, Respondent asserted a policy exhaustion defense.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic case file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. Without opposition, documents uploaded to the electronic case file as of the hearing date were incorporated into the record. I have reviewed the exhibits for both parties and make my decision in reliance thereon. The hearing was conducted on a zoom platform.

Pursuant to 11 NYCRR 65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations.

Assignor, a 22-year-old female driver, reportedly sustained multiple injuries following a motor vehicle accident that occurred on April 18, 2023. On September 5, 2023, Applicant supplied a LSO to Assignor and filed this claim seeking payment of charges in the amount of \$928.09. Upon receipt of Applicant's NF3, Respondent timely denied payment of Applicant's charges predicated upon the findings of its consultant, Dr. Anthony Spataro's, Independent Medical Examination dated July 20, 2023 with a correlating global denial of Assignor's orthopedic related no-fault benefits as of August 4, 2023. For hearing purposes, however, Respondent asserted a policy exhaustion defense proffering payment ledgers including offsets, a global denial dated November 13, 2023 and the declaration page noting that no additional Personal Injury Protection (PIP) coverage was taken for this insured vehicle. Applicant rested on its record.

New York Insurance Law § 5102 provides as follows: (a) "Basic economic loss" means, up to fifty thousand dollars per person of the following combined items, subject to the limitations of section five thousand one hundred eight of this article: (1) All necessary expenses incurred for: (i) medical, hospital (including services rendered in compliance with article forty-one of the public health law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services; (ii) psychiatric, physical and occupational therapy and rehabilitation; (iii) any non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this state; and (iv) any other professional health services; all without limitation as to time, provided that within one year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury.

When an insurer "has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease." *Countrywide Ins. Co. v. Sawh*, 272 A.D.2d 245 (1st Dept. 2000). See also *Allstate Insurance Company v. Demoura*, 30 Misc.3d 145(A), 2011 N.Y. Slip Op. 50430(U) (App. Term 1st Dept. 2011); *Hospital for Joint Diseases v. State Farm Mutual Automobile Insurance Company*, 8 A.D.3d 533, 779 N.Y.S.2d 534 (2nd Dept. 2004).

Upon due consideration, a thorough of the record and the sum of pay-outs totaling the policy limits, I find for Respondent. An arbitrator's award directing payment in excess of the limit of a no-fault insurance policy exceeds the arbitrator's power and constitutes grounds for vacatur of the award. See in general, *Brijmohan v. State Farm Ins. Co.*, 92 N.Y.2d 821, 823 (1998). Moreover, I find timely denied claims do not hold a place on the priority of payment line to subsequently filed claims that were paid by the Respondent. *Harmonic Physical Therapy v. Praetorian Insurance Company*, 47 Misc.3d 137(A), 2015 N.Y. Slip Op. 50525(U) (App. Term 1st Dept. 2015). I am aware of and acknowledge the holding in *Alleviation Med. Servs., PC v. Allstate Ins. Co.*, 55 Misc. 3d 44, 49 N.Y.S. 3d 814 (App. Term, 2017) and subsequent decisions speaking to the priority of payment of claims. However, I find the holding and reasoning in *Harmonic Physical Therapy v. Praetorian Ins. Co.*, 47 Misc. 3d 137(A), 15 N.Y.S. 3d 711 (App. Term, 2015) controlling.

Accordingly, for the foregoing reasons, 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 Nassau

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

08/27/2024
(Dated)

Ellen Cutler-Igoe

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:
1024af87d333a84b3db8e9bee5b58531

Electronically Signed

Your name: Ellen Cutler-Igoe
Signed on: 08/27/2024