

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Healthcare Partners  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No.	17-24-1334-5386
Applicant's File No.	3169413
Insurer's Claim File No.	0660344458-01
NAIC No.	29688

**ARBITRATION AWARD**

I, Eileen Casey, 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 08/15/2024  
Declared closed by the arbitrator on 08/15/2024

Jessica Buscarino, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Michael Rago, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$569.60**, 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

The EIP (MM), a 40-year-old female, was the driver of a motor vehicle involved in accident on February 23, 2022. The amount claimed is \$569.60 for physical therapy provided from February 9, 2023 through May 26, 2023 and chiropractic treatment provided on May 18, 2023. Respondent originally payment for the physical therapy on 2 DOS based on the 120-day rule and denied payment for the chiropractic treatment based on an independent medical examination (IME). Respondent did not deny the claims for the physical therapy on 3 DOS but instead requested additional verification. Respondent now asserts that the applicable policy limits have been exhausted. The issue is whether Respondent established that it is not required to reimburse Applicant for the services in dispute as the PIP policy limits have been exhausted.

#### 4. Findings, Conclusions, and Basis Therefor

This case was decided based upon oral arguments and a review of the documents contained in the ADR Center maintained by the American Arbitration Association for this case and a linked case AAA # 17-24-1333-0105 heard on the same day. The amount claimed is \$569.60 for physical therapy provided from February 9, 2023 through May 26, 2023 and chiropractic treatment provided on May 18, 2023.

##### **Applicant's Prima Face Case**

The evidence demonstrates that the EIP (MM), a 40-year-old female, was the driver of a motor vehicle involved in accident on February 23, 2022.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document 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 was overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Ifind that Applicant established a prima case for reimbursement.

##### **Policy Exhaustion**

Respondent originally payment for the physical therapy on 2 DOS based on the 120-day rule and denied payment for the chiropractic treatment based on an independent medical examination (IME). Respondent did not deny the claims for the physical therapy on 3 DOS but instead requested additional verification. Respondent now asserts that the applicable policy limits have been exhausted. The Declarations Page of the applicable policy confirms that the PIP limit is \$50,000. Respondent also submitted a payment log showing that, after factoring in the lost wage offsets, the policy limits were exhausted.

I am aware of the Appellate Term's holding in *Alleviation Medical Services, P.C. v. Allstate*, 55 Misc. 3d 44 (App. Term 2nd Dept. 2017), that the insurer's argument that it need not pay the claim at issue because the insurer paid other claims after it had denied the instant claim, which subsequent payments exhausted the available coverage, lacked merit. However, I decline to follow this holding. Upon appeal, the Appellate Division, Second Department, in *Alleviation Medical Services, P.C. v. Allstate Ins. Co.*, 191 A.D.3d 934 (2d Dept. 2021), affirmed the Appellate Term's holding on different grounds than those relied upon by the Appellate Term. The Second Department held that the defendant's submissions failed to establish its prima facie entitlement to judgment as a matter of law. In effect, the Appellate Division did not reach the issue of whether an insurer must comply with the priority of payment provision encoded within 11 N.Y.C.R.R. Section 65-3.15 in order to establish its defense of policy exhaustion.

I rely on the court decisions holding that an insurer is not required to pay a claim where the policy limits have been exhausted.

It has been established that an insurer is not required to pay a claim where the policy limits have been exhausted. *Mount Sinai Hospital v. Zurich Ins. Co.* 15 A.D. 3d 55, 790 N.Y.S. 2d 216 (2d Dept. 2005). Once an insurance carrier pays the full policy limits, its duties under the policy cease. *Presbyterian Hospital in the City of NY v. Liberty Mut. Ins. Co.*, 216 A.D. 2d 448, 628 N.Y.S. 2d 396 (2d Dept. 1995). Once the policy is exhausted, a carrier is not obligated to make any further payments, notwithstanding a priority of claim or an overturned denial. *Long Island Radiology v. Allstate*, 36 A.D. 3d 763, 830 N.Y.S. 2d 182 (App. Div. 2d Dept. 2007).

Even if the insurer failed to issue a denial of the claim within 30 days, it is not precluded to raise the defense that the coverage limits of the subject policy have been exhausted. *New York and Presbyterian Hospital v. Allstate Ins. Co.*, 12 A.D.3d 579, 786 N.Y.S.2d 68 (2d Dept. 2004). Additionally, a defense of no coverage due to the exhaustion of an insurance policy's limit may be asserted by an insurer despite its failure to issue an NF-10 denial of claim form within the requisite 30-day period. *Flushing Traditional Acupuncture, P.C. v. Infinity Group*, 2012 N.Y. Slip Op. 22345, 2012 WL 5974095 (App. Term 2d, 11th & 13th Dists. Nov. 26, 2012). Indeed, the courts have held that when an insurer has demonstrated, as a matter of law, that it paid the full monetary limits of the policy, then Respondent is not obligated to pay anything further on a claim and its duties under the policy cease. See, *Allstate Ins. Co. v. DeMoura*, 30 Misc.3d 145A (1st Dept. 2000); *New York Presbyterian Hosp. v. Liberty Mut. Ins. Co.*, 216 A.D.2d (2d Dept. 1995); *New York Presbyterian Hosp. v. Progressive Cas. Ins. Co.*, 5 A.D.3d 570 (2 Dept. 2004).

Additionally, an arbitrator's award directing payment in excess of the limits of an insurance policy exceeds the arbitrator's power and constitutes grounds for vacatur of the award. *Matter of Brijmohan v. State Farm Ins. Co.*, 92 N.Y.2d 821, 822 (1998); *Countrywide Ins. Co. v. Sawh*, 272 A.D.2d 245 (1st Dept. 2000). See also, *Ameriprise Ins. Co. v. Kensington Radiology Group, P.C.*, 58 Misc.3d 144(A), 2017 N.Y. Slip Op. 51911(U) (App. Term 1st Dept. Dec. 22, 2017), *aff'd*, 179 A.D.3d 563 (1st Dept. 2020).

## **Findings**

Based upon the foregoing, I find that Respondent demonstrated that the applicable PIP limits have been exhausted. It has been well established that an insurer is not required to pay a claim where the policy limits have been exhausted. Additionally, an arbitrator's award directing payment in excess of the limits of an insurance policy exceeds the arbitrator's power. Accordingly, Applicant's claim is denied in its 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 Queens

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

09/04/2024

(Dated)

Eileen Casey

**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:**  
f4d2576dc552c72655873545a30c1b91

### Electronically Signed

Your name: Eileen Casey  
Signed on: 09/04/2024