

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sedation Vacation Perioperative Medicine  
PLLC  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

|                          |                 |
|--------------------------|-----------------|
| AAA Case No.             | 17-23-1323-9009 |
| Applicant's File No.     | NF3741791       |
| Insurer's Claim File No. | 22-8566518      |
| NAIC No.                 | 24260           |

**ARBITRATION AWARD**

I, Anne Malone, 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 06/18/2024, 10/14/2024  
Declared closed by the arbitrator on 10/14/2024

Vijay Gupta, Esq. from The Law Office of Thomas Tona, PC participated virtually for the Applicant

Ashely Hansbury from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$178.26**, 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 42 year old EIP reported involvement in a motor vehicle accident on August 22, 2022; claimed related injury and underwent anesthesia services provided by the applicant on July 28, 2023.

The applicant submitted a claim for these medical services, payment of which was initially denied based on the IME of the EIP which was performed by Pierce Ferriter, M.D. on December 13, 2022 and was subsequently denied due to exhaustion of benefits.

The applicant asserts that the MedPay benefits are included in the available no fault benefits for medical treatment and therefore, the policy is not exhausted.

**The issues to be determined at the hearing are:**

**Whether the respondent established that the no-fault benefits under the policy were exhausted.**

**Whether this forum has subject matter jurisdiction over a claim for MedPay benefits under the no fault benefits in the subject policy of insurance.**

**Whether the respondent established that the medical services provided by the applicant were not medically necessary.**

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

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

##### Exhaustion of Benefits

In support of its contention that the no-fault benefits under the policy at issue were exhausted at the time of the denial of the subject claim, the respondent submitted a copy of the declaration page of the policy at issue, a copy of the payment ledger and proof of payment for medical payments and lost wages. It is undisputed that the \$50,000 of no fault benefits have been exhausted. The policy at issue does not contain OBEL or additional PIP as part of the Personal Injury Protection Benefits.

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. Swah, 272 A.D.2d 245 (1<sup>st</sup> Dept. 2000.) A defense of no coverage due to the exhaustion of No- Fault policy limits may be asserted by an insurer despite its failure to issue an NF-10 denial of claim form within the requisite 30 day period. New York & Presbyterian Hosp. v. Allstate Ins. Co., 12 A.D.3d 579 (2d Dept. 2004.)

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 (1998.) Moreover, pursuant to NY Insurance Law §5102(b)(3) "amounts deductible under the applicable insurance policy" are a part of the reimbursed amount."

### Med Pay

The applicant asserts that the subject policy included MedPay benefits in the amount of \$1,000.00, of which \$630.89 remains available and which must be paid in addition to the \$50,000 no fault benefits before the no fault benefits of the policy are considered exhausted.

An opinion letter from the Office of General Counsel of the New York State Insurance Department of 7/30/2008 states in pertinent part: "[u]pon exhausting the amount of no-fault benefits available the assignment is no longer effective. At that point, the patient must rely on any other available insurance coverage and the provider's ability to bill the patient directly will depend on the contractual arrangement that the provider has with the patient's subsequent insurer, if in fact there is other insurance coverage. If the patient has no other form of insurance, the provider may bill the patient directly once the no-fault benefits are exhausted as the patient is now an uninsured person."

Every automobile insurance policy in New York State requires first-party Personal Injury Protection benefits of \$50,000.00 for "basic economic loss" for covered persons injured in automobile accidents. N.Y. Ins. Law §§ 5102 et seq.; N.Y. Comp. Codes R. & Regs. tit. 11, § 65-1.1. In addition to the mandatory minimum PIP benefits, policyholders can purchase additional first-party benefits called Additional Personal Injury Protection (APIP), as well as Optional Basic Economic Loss protection (OBEL), both of which provide higher limits of no-fault coverage. See id. §§ 65-1.3, 1.2.

Excess coverage may be afforded but is not required. See § 65-1.1(d)(Section II). Medical Payment Coverage, also known as MedPay, is such excess coverage. It is not a first-party benefit or additional first-party benefit as those terms are defined in N.Y. Ins. Law § 5102(a), (b) and § 65-1.1(d). MedPay is an optional endorsement to general liability coverage on a policyholder's automobile insurance policy and is not payable until Mandatory PIP, OBEL, or Additional PIP benefits paid or payable are exhausted. MedPay endorsements, unlike those for Mandatory PIP, OBEL, and Additional PIP, are not statutorily prescribed and differ between automobile insurers and automobile insurance policies.

Ins. Law § 5106(b) requires the Superintendent of Financial Services to promulgate simplified procedures for the resolution by arbitration of "no-fault disputes." N.Y. Comp. Codes R. & Regs. tit. 11, § 65-4.2(a)(1). "No-fault disputes" are defined by § 5106(b) as disputes "involving the insurer's liability to pay first party benefits, or additional first party benefits." This forum, administered by the American Arbitration Association, has been designated to hear said "no-fault disputes" pursuant to § 65-4.2(a)(3). Section 65-4.3(b) specifies the jurisdiction of this selected forum, stating "all disputes remaining

after expiration of the conciliation period, . . . shall be forwarded to the No-Fault Arbitration forum which shall be the forum for their resolution."

This forum lacks subject-matter jurisdiction over this non "no-fault dispute" involving MedPay coverage. This forum strictly exists for the adjudication of disputes involving the mandatory coverage required by the Insurance Law and its promulgated Regulations as only those were contemplated in the Regulations wherein this forum derives its jurisdictional powers. It does not exist to resolve disputes involving un contemplated optional excess coverage. Those contractual disputes may be resolved by the New York State judiciary and the Applicant is not prejudiced from pursuing remedial action in the proper forum.

In the matter before me, it is undisputed that the no fault benefits under the policy of insurance, which provided coverage for the subject accident, are exhausted. I find that this forum lacks subject matter jurisdiction over the issue of reimbursement for MedPay benefits under subject policy.

Based on the foregoing, I find in that the respondent has established that the no-fault benefits for this claim are exhausted.

Under these circumstances, the issue of medical necessity is moot.

**Accordingly, the applicant's claim for further no fault benefits is denied and any claim for MedPay benefits is dismissed without prejudice to be renewed in the proper forum.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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                                     |
|--------------|--|--------------------------------|-----------------|--|
|              | <b>Sedation<br/>Vacation<br/>Perioperative<br/>Medicine<br/>PLLC</b> | <b>07/28/23 -<br/>07/28/23</b> | <b>\$178.26</b> | <b>Dismissed<br/>without<br/>prejudice</b> |
| <b>Total</b> |  |                                | <b>\$178.26</b> | <b>Awarded: \$0.00</b>                     |

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

State of CT

SS :

County of Fairfield

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

10/16/2024  
(Dated)

Anne Malone

### 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:**  
c5ad69aed4be76c0ebed86eba2ee4f78

### Electronically Signed

Your name: Anne Malone  
Signed on: 10/16/2024