

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Cross Bay Orthopedic Surgery PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1345-3732

Applicant's File No. 154994

Insurer's Claim File No. 32-58K6-09P

NAIC No. 25178

ARBITRATION AWARD

I, Kathleen Sweeney, 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: IP

1. Hearing(s) held on 10/01/2024
Declared closed by the arbitrator on 10/01/2024

John Faris from Law Offices of Eitan Dagan participated virtually for the Applicant

Shenikqua Snell from Sarah C. Varghese & Associates f/k/a James F. Butler & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$6,392.04**, 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

Whether Respondent established that the policy was exhausted?

This arbitration arises out of medical treatment for the IP, a 56 year old male, related to injuries sustained in a motor vehicle accident that occurred on 10/26/23. Applicant seeks reimbursement for fees related to shoulder surgery provided on 2/3/24. Respondent contends that the policy has been exhausted.

4. Findings, Conclusions, and Basis Therefor

The threshold issue is whether the policy limit of \$50,000.00 has been exhausted. In *Hospital for Joint Diseases v. Hertz Corp.*, 22 AD3d 724, 2005 NY Slip Op 07932 (App Div., 2nd Dept.), the Court held "when an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease." Additionally, policy exhaustion may be proven by submitting a payment log or payment register establishing when and to whom payments made totaling the policy limits. See *St. Vincent's Hospital & Medical Center, etc. v. Allstate Insurance Company*, 294 AD2d 425, 742 N.Y.S.2d 350 (2002).

Respondent included policy documentation in the form of the Declarations Page which confirms that the Basic PIP limit was \$50,000.00 and there was no additional PIP or Optional Basic Economic Loss Coverage purchased. Also included is a copy of the Payment Ledger showing that the Respondent paid up to the \$50,000 policy limits. Case law dictates that an insurer is not required to pay a claim where the policy limits have been exhausted, *Mount Sinai Hospital v. Zurich American Insurance Co.*, 15 A.D.3d 55, 790 N.Y.S.2d 216 (2d Dept. 2005). In addition, when an insurer "has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease", See *Presbyterian Hosp. in the City of New York v. Liberty Mut. Ins. Co.*, 216 A.D.2d 448, 628 N.Y.S.2d 396 (2d Dept. 1995). Furthermore, pursuant to 11 NYCRR 65-3.15: When claims aggregate to more than \$50,000, payments for basic economic loss shall be made to the applicant and/or an assignee in the order in which each service was rendered or each expense was incurred, provided claims therefore were made to the insurer prior to the exhaustion of the \$50,000. If the insurer pays the \$50,000 before receiving claims for services rendered prior in time to those which were paid, the insurer will not be liable to pay such late claims. If the insurer receives claims of a number of providers of services, at the same time, the payments shall be made in the order of rendition of services.

In the instant case, Respondent maintains that the applicable Personal Injury Protection (PIP) benefits under the policy have been exhausted. In support of this contention Respondent submitted payment log/ PIP ledger and documentation confirming insurance policy information and terms of the underlying insurance policy. The policy exhaustion precludes the Applicant from collecting on this claim. Coverage does not exist beyond the policy limits. Once the limits are exhausted, it is as if no policy was ever in effect. The insured, or the insured's assignees, have received the full benefit of the policy.

Applicant argued that *Alleviation Medical Services, PC v. Allstate Insurance Company*, 2017 NY Slip Op 27097 (App. Term 2d Dept., 3/29/17) should apply. There the court determined that defendant's denial of a claim based on lack of medical necessity implicitly declared that the claim at issue was fully verified and as such was payable in the order it was received in accordance with 11 NYCRR 65 - 3.15 and *Nyack Hospital*, supra. To the extent that the finding supports payment in excess of the policy if the underlying claim was timely denied, it is an anomaly I cannot consider.

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

(1 Dept. 2000). See also 30 Misc.3d 145(A), at Allstate Insurance Company v. Demoura, 2011 N.Y. Slip Op. 50430(U) (App. Term 1 Dept. 2011); at Hospital For Joint Diseases v. State Farm Mutual Automobile Insurance Company, 8 A.D.3d 533, 779 N.Y.S.2d 534 (2 Dept. 2004). Timely denied claims do not hold a place on the priority of payment line to subsequently filed claims that were paid by the Respondent. A defense of no coverage due to the exhaustion of a No-Fault insurance policy's limit may be asserted by an insurer despite its failure to issue an NF-10 denial of claim forms within the requisite 30 day period, see New York & Presby. Hosp. v. Allstate Ins. Co., 12 A.D.3d 579, 580 (2 Dept. 2004); Flushing Traditional Acupuncture, P.C. v. Infinity Group, 38 Misc.3d 21, 2012 N.Y. Slip Op. 22345 (App. Term 2d, 11th and 13th Jud. Dists. 2012); Crossbridge Diagnostic Radiology v. Encompass Ins., 24 Misc.3d 134(A), 2009 N.Y. Slip Op. 51415(U) (App. Term 2d, 11th and 13th Jud. Dists. 2009), and 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, see Matter of Brijmohan v. State Farm Ins. Co., 92 N.Y.2d 821, 822 (1998); Countrywide Insurance Company v. Sawh, 272 A.D.2d 245 (1 Dept. 2000).

Moreover, here, the Respondent submitted a payment log showing that it exhausted its policy limits of \$50,000.00, prior to the hearing of this matter. Since the Respondent exhausted its policy limits prior to the hearing of this matter, I find that there are no available funds to satisfy the Applicant's claim. I should note that Respondent contended that it timely paid the first bill but upon review of the cashed check it was payable to a different entity altogether. Nonetheless, this error cannot trump the fact that the policy is exhausted. See Federal Ins. Co. v. North Am. Specialty Ins. Co., 83 AD3d 401 (1 Dept 2011), See also Pavia v State Farm Mut Auto Ins Co 82 NY2d 4435 (1993).

Accordingly, the Respondent's defense of policy exhaustion is sustained. Upon due consideration of all the issues in this matter, Applicant's claim must be 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, Kathleen Sweeney, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/31/2024
(Dated)

Kathleen Sweeney

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:
2792d4a2e8597b7082b0d928aee377fe

Electronically Signed

Your name: Kathleen Sweeney
Signed on: 10/31/2024