

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

Bristol West Insurance Co
(Respondent)

AAA Case No. 17-24-1352-2760

Applicant's File No. ACT24-181713

Insurer's Claim File No. 7007175916-1

NAIC No. 11185

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 01/06/2025, 01/27/2025
Declared closed by the arbitrator on 01/27/2025

Jared Mallino, Esq. from The Licatesi Law Group, LLP participated virtually for the Applicant

no appearance from Bristol West Insurance Co participated by written submission for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,811.86**, 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 51 year old EIP reported involvement in a motor vehicle accident on February 8, 2024; claimed related injury and underwent an office visit and trigger point injection with guidance provided by the applicant on April 16, 2024.

The applicant submitted a claim for these medical services, partial payment of which was made by the respondent pursuant to its calculation of the correct reimbursable amount pursuant to the New York Workers' Compensation Medical Fee Schedule for services provided by a PA.

The denial of this claim based on the respondent's fee schedule defense was late on its face.

The claim was subsequently denied due to exhaustion of benefits.

The issues to be determined at the hearing are:

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

Whether the denial was timely and proper.

Whether the applicant is entitled to attorney's fees and filing fee for the bill at issue.

4. Findings, Conclusions, and Basis Therefor

The hearing was held on Zoom and this 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.

Timeliness of Denials

According to the NF-10 submitted by the respondent the bill for date of service 04/16/2024 was dated 04/23/2024 and was received by the respondent of 04/30/2024. The denial is dated 06/18/2024.

The penalty for an insurer's failure to issue a timely and proper denial of claim is that it will be precluded from objecting to the claim. In Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co., 114 A.D.3d 33 (2d Dept. 2013) the Appellate Division held that:

Challenges and objections regarding whether the services were in fact rendered, were causally related to a covered accident or were medically necessary are not available to the defendant insurer after the onset of litigation unless the insurer proffered a timely and proper denial of claim within the prescribed time frame.

Under these circumstances, since the respondent did not issue a proper and timely denial within the prescribed time frame of 30 days from receipt of the bill in question it has not preserved any defense, except for fee schedule, if applicable.

The respondent submitted proof of payment of the bill at issue, in accordance with the appropriate fee schedule for services rendered by a PA. However, according to the submissions, the claim was denied and payment was made after the date of filing for arbitration.

The hearing was initially scheduled on January 6, 2025 at which time no one appeared on behalf of the respondent. At that time the proof of partial payment of the bill at issue was insufficient.

The hearing was adjourned until January 27, 2025 and prior to that date, the respondent submitted proper proof of payment of the bill at issue with interest. No one on behalf of the respondent appeared at this hearing and the respondent decided to rely on its submissions which were sufficient to establish its fee schedule defense.

Exhaustion of Benefits

In support of its contention that benefits under the policy at issue were exhausted at the time of the denial 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.

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 (1st 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."

The denial and partial payment of this claim was late however, the respondent has established its defense of exhaustion of benefits.

The partial payment of the bill including interest was made after the date of the applicant's filing of this claim for arbitration.

Attorneys' fees and filing fee

Due to the late denial and payment of the bill at issue after the date of the filing of this claim for arbitration, the applicant is entitled to attorneys' fees and filing fee.

Accordingly, the applicant is awarded \$222.89 in attorneys' fee and \$40.00 in filing fee and the remainder of the claim is dismissed with prejudice.

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
---------	---------	--------------	--------

	Atlantic Medical & Diagnostic PC	04/16/24 - 04/16/24	\$2,811.86	Awarded (non-monetary)
Total			\$2,811.86	Awarded: \$0.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/17/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The applicant was paid additional interest at the time that the respondent made payment of the claim. No further interest is due.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. The bill for this claim was received by the respondent on 04/30/2024 and payment was made on 06/18/2024. The applicant filed for arbitration of this claim on June 16, 2024.

The respondent is entitled to \$222.89 in attorneys' fees.

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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.

01/27/2025
(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:
272215c59005f18a6b3978782fd446ad

Electronically Signed

Your name: Anne Malone
Signed on: 01/27/2025