American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

South Shore Wellness, PT, P.C. (Applicant)	AAA Case No.	17-24-1354-5515
	Applicant's File No.	NM24-102165
- and -	Insurer's Claim File No.	360871
	NAIC No.	10839
Country-Wide Insurance Company (Respondent)		

ARBITRATION AWARD

I, Amanda R. Kronin, 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: GB

1. Hearing(s) held on 02/04/2025
   Declared closed by the arbitrator on 02/04/2025

   Nicole Montrony, Esq from Montrony at Law participated virtually for the Applicant

   Cody Robar, Esq from Jaffe & Velazquez, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$2,986.56**, 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 Assignor, GB, a male driver, was reportedly injured in a motor vehicle accident on 8/29/23. Applicant seeks no-fault reimbursement for treatment provided from 9/06/23 through 11/22/23. Respondent alleges that the policy limits have been reached and that they cannot be compelled to pay out more than the policy limits. The issue presented is whether the respondent has presented sufficient proof to show that the policy limits have been reached.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

The Applicant seeks no-fault reimbursement for the fees associated with the above treatment. In support of its position, Applicant submitted claims totaling $854.90 for the treatment specified above, an assignment of benefits form and contemporaneous medical documentation.

It is well settled that an applicant establishes its prima facie entitlement to payment by proving it submitted a claim setting forth the facts and the amount of the loss sustained and that payment of no fault benefits were overdue (see Insurance Law § 5106[a]; Mary Immaculate Hospital v Allstate Ins. Co. 5 A.D.3d. 742 Second Dep't 2004), A.B. Medical Services PLLC v Lumbermans Mutual Cas. Co., 4 Misc. 3d. 86 (App. Term 2d. & 11th Jud. Dists. 2004). A prima facie case has been established herein for the bill for services rendered

The threshold issue is whether the policy limit of $50,000.00 has been exhausted. Ins. Law § 5102 states that basic economic loss means up to $50,000.00 per person. In Hospital for Joint Diseases v. Hertz Corp., 22 A.D.3d 724 (2nd Dept., 2005), the Second Department held "when an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease." When an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease and an arbitrator would be exceeding his or her authority in issuing an award in excess of the policy limits. Countrywide Ins. Co. v. Swah, 272 A.D.2d 245 (1st Dept. 2000). A defense of no coverage due to the exhaustion of a No-Fault insurance policy's limit may be asserted by an insurer despite is failure to issue a NF-10 denial of claim form within the requisite 30-day period. New York & Presby. Hosp. v. Allstate Ins. Co., 12 A.D.3d 579, 580 (2d Dept. 2004).

The respondent has produced a policy declarations page that shows that the applicable policy of insurance has $50,000.00 in applicable PIP benefits. Thus, the respondent alleges that the offsets, when combined with the payments made towards medical and lost wages claims, have exhausted the $50,000.00 PIP limit.

Insurance Law § 5102(b) states: (b) "First party benefits" means payments to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle, less: (1) Twenty percent of lost earnings computed pursuant to paragraph two of subsection (a) of this section. (2) Amounts recovered or recoverable on account of such injury under state or federal laws providing social security benefits, or workers' compensation benefits, or disability benefits under article nine of the workers' compensation law, or medicare benefits, other than lifetime reserve days and provided further that the medicare benefits utilized herein do not result in a reduction of such persons' medicare benefits for a subsequent illness or injury.

Further, the no-fault regulations make it clear that an insurer is entitled to apply offsets to a lost wage claim. 11 NYCRR § 65-3.16(b) states: (1) Benefits from other sources shall not be considered as an offset against or a deduction from loss of earnings, unless article 51 of the Insurance Law expressly provides for such offset or deduction. In addition, 11 NYCRR § 65-3.19 provides a lengthy discussion of the types and amounts of offsets that can be applied to a lost wage payment.

As the Court in Harmonic states: Contrary to plaintiff's contention, defendant was not precluded by 11 NYCRR 65-3.15 from paying other providers' legitimate claims subsequent to the denial of plaintiff's claims. Adopting plaintiff's position, which would require defendant to delay payment on uncontested claims, or, as here, on binding arbitration awards - pending resolution of plaintiff's disputed claim - "runs counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims" *(*Nyack Hosp. v General Motors Accept. Corp., 8 NY3d at 300). *Id.* Thus, I find that the respondent has submitted sufficient evidence to sustain their policy exhaustion defense and the instant 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 Suffolk

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

02/05/2025
(Dated)

Amanda R. Kronin

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:
acfd231cf43cb2d602fe9a2eaad59440

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 02/05/2025