

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NK Reliable Ortho Supply, Inc  
(Applicant)

- and -

National General Insurance Company f/k/a  
GMAC  
(Respondent)

AAA Case No. 17-23-1320-1834

Applicant's File No. DK23-373753

Insurer's Claim File No. 230326735

NAIC No. 22772

### **ARBITRATION AWARD**

I, Pamela Hirschhorn, 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: Injured Person

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

Artur Finkel, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$3,300.00**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

See, the within award.

3. Summary of Issues in Dispute

The injured person was a female (DOB 2/4/81) who was involved in the subject motor vehicle accident of April 18, 2023. The parties acknowledged that the claim is for DME provided on June 5, 2023.

The parties stipulated that the claim was timely denied.

The issue is whether the respondent submitted documentary evidence establishing that the policy is exhausted.

4. Findings, Conclusions, and Basis Therefor

The injured person was a female (DOB 2/4/81) who was involved in the subject motor vehicle accident of April 18, 2023. The parties acknowledged that the claim is for DME provided on June 5, 2023.

The parties stipulated that the claim was timely denied.

The issue is whether the respondent submitted documentary evidence establishing that the policy is exhausted.

It was undisputed that the respondent submitted documentary evidence establishing that the policy is now exhausted as more than \$50,000 has been paid out on the policy. See, also, AAA Case no. 17-23-1326-2533 (Pamela Hirschhorn, Arb.).

In the context of No-Fault insurance, an insurer is not required to pay a claim where the policy limits have been exhausted. See, *Mt. Sinai Hosp. v. Zurich Am. Ins. Co.*, 15 AD3d 550, 790 NYS2d 216, 2005 NY App. Div. LEXIS 1870. See, also, *Hosp. For Joint Diseases v. State Farm Mut. Auto. Ins. Co.*, 8 AD3d 533, 779 NYS2d 534, 2004 N.Y. App. Div. LEXIS 8759.

An arbitrator's award directing payment in excess of the policy limits of a No-Fault insurance policy exceeds the arbitrator's power and constitutes grounds for vacatur of the award. See, 11 NYCRR 65-4.10 (a) (2). See, also *Brijmohan v. State Farm Ins. Co.*, 92 NY2d 821 (1998); *Country-wide Ins. Co. v. Sawh*, 272 AD2d 245 (1<sup>st</sup> Dept. 2000); *Allstate Ins. Co. v. DeMoura*, 30 Misc.3d 145(A) (N.Y. App. Term 2011). Although in *Alleviation Med. Services PC v. Allstate Ins. Co.*, 55 Misc. 3d 44 (App. Term 2d. 11th and 13th Jud Dists, May 17, 2017), respondent was required to pay the claim

despite policy exhaustion if medical necessity was established, in *Manaplan Surgery Center & Geico Ins. Co.*, AAA Case no. 17-17-1064-0262 (3/15/19) (Philip Wolf, Arb.), Arbitrator Philip Wolf addressed this issue and found that *Harmonic Physical Therapy, PC v. Praetorian Ins. Co.*, 47 Misc. 3d 137[A], 2015 NY Slip Op 50525[U] [App Term, 1st Dept. 2015]), constitutes "a more precise elucidation of the existing case law" regarding the requirements of an insurer upon exhaustion of an insurance policy and the No-Fault regulations priority of payment of claims. Arbitrator Wolf found that to hold otherwise, as noted by the Court in *Harmonic, supra*, would "run counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims." See, also, *U.S. Med. Supply Corp. & Geico Ins. Co.*, AAA Case no. 17-18-1088-3260 (7/17/19) (Victor Moritz, Arb.). Accordingly, this arbitrator finds that since the subject policy limits have been exhausted, the 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 Nassau

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

02/06/2025  
(Dated)

Pamela Hirschhorn

**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:**  
f5f8959733e2ed56134f5b554613febd

**Electronically Signed**

Your name: Pamela Hirschhorn  
Signed on: 02/06/2025