

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Pain Specialists PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-24-1356-9619

Applicant's File No. n/a

Insurer's Claim File No. 9UINY01215-01

NAIC No. 29742

ARBITRATION AWARD

I, Mitchell Kleinman, 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: claimant.

1. Hearing(s) held on 04/08/2025
Declared closed by the arbitrator on 04/08/2025

Rajesh Barua, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)
participated virtually for the Applicant

Lauren Hirschfeld, Esq. from Law Offices of Eric Fendt participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$148.69**, 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

This arbitration arises out of a January 31, 2020, motor vehicle accident in which the claimant, W.E., a then 46-year-old male, was injured as a result of an accident involving the insured vehicle. The claimant reported injuries to multiple body parts, which resulted in his seeking treatment. In dispute is Applicant's claim for an office visit in the amount of \$148.69 provided to the claimant on February 6, 2020. Respondent timely denied the claim based upon failure to comply with the NY Workers' Compensation Fee Schedule ("fee schedule") and the limits of the policy being reached. The issue at this hearing is whether Respondent's policy exhaustion defense can be sustained.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the electronic file for both parties and make my decision in reliance thereon.

Applicant established a prima facie case of entitlement to reimbursement of its claim, by submitting evidence that the prescribed statutory billing forms were mailed and received by the insurer and payment of No-Fault benefits was overdue. See, *Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, NY Slip Op 04787 (2015). The burden then shifted to the insurer to come forward with admissible evidence demonstrating the existence of a material issue of fact. *Amaze Medical Supply Inc. v. Allstate Insurance Co.* 3 Misc.3d 43, 779 N.Y.S.2d 715 (N.Y. App. Term 2004).

Policy Exhaustion

Respondent submits sufficient evidence demonstrating that the subject policy in this case had mandatory personal injury protection limited to \$50,000. Respondent also submits a payment ledger and other supporting documents. 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 insurance policy's limit may be asserted by an insurer despite its 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); *Flushing Traditional Acupuncture, P.C. v. Infinity Group*, 2012 NY Slip Op 22345 (App Term 2d, 11th & 13th Jud Dists November 26, 2012); *Crossbridge Diagnostic Radiology v. Encompass Ins.*, 24 Misc.3d 134(A), 2009 NY Slip Op 5141(U) (App Term 2d, 11th & 13th Jud Dists 2009). The Applicant has argued priority of payment relying on *Alleviation Med. Servs., P.C. v. Allstate Ins. Co.*, 2017 NY Slip Op 27097 [55 Misc 3d 44] (App Term 2d, 11th & 13th Jud Dists. March 29, 2017). However I do not find this argument to be persuasive, particularly in light of the holding in *Harmonic Physical Therapy, P.C. v. Praetorian Ins. Co.*, 47 Misc. 3d 137(A)(App. Term 1st Dept. 2017). The Applicant has argued priority of payment relying on *Alleviation Med. Servs., P.C. v. Allstate Ins. Co.*, 2017 NY Slip Op 27097 [55 Misc 3d 44] (App Term 2d, 11th & 13th Jud Dists. March 29, 2017). However I do not find this argument to be persuasive, particularly in light of the holding in *Harmonic Physical Therapy, P.C. v. Praetorian Ins. Co.*, 47 Misc. 3d 137(A)(App. Term 1st Dept. 2017). 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 DTR Country-Wide Ins. Co. v. Refill Rx Pharmacy, Inc.*, 2023 NY Slip Op 00179 (Appellate Division, 1st Dept., January 17, 2023); *Matter of Brijmohan v. State Farm Ins. Co.*, 92 N.Y.2d 821, 822 (1998); *Countrywide Ins. Co. v. Sawh*, 272 A.D.2d 245 (1st Dept. 2000). See AAA Case No. 17-20-1153-9621. Several arbitrators, including Arbitrator Glen Cacchioli in AAA Case No. 17-20-1156-6870, have addressed this new Alleviation case, but have not found it persuasive. I agree with, and adopt, Arbitrator Cacchioli's reasoning and analysis and, for the reasons set forth herein, Applicant's claim is denied. See also AAA Case No. 17-21-1199-2323.

The Office of General Counsel issued the following opinion on July 30, 2008, representing the opinion of the New York Insurance Department which states, in pertinent part:

When a patient's available no-fault benefits are exhausted, the assignment of those benefits for health services rendered is no longer effective, as there are no other benefits available under the applicable policy. Whether the health care provider is thereafter able to bill the patient is dependent upon whether any other health services coverage is available and, if so, the contractual arrangement that the provider has with the patient...See, New York State Department of Financial Services, OGC Op. No. 08-07-28

The opinion letter indicates that the provider has other means to recoup its expenditures and reimbursement for the services it provides, namely from the claimant or from secondary insurance coverage. Since the provider has other alternatives to seek payment, I find that the priority in which the bill to have been received to be irrelevant. Based upon the aforementioned, I find that the Applicant is not entitled to payments in this case since the policy has been exhausted. See AAA Case No. 17-21-1199-5761; AAA Case No. 99-22-1233-4977 (Master Arbitrator A. Jeffrey Grob reviewing similar award and finding "that the Arbitrator below examined and weighed the positions asserted by the respective parties and articulated a well-reasoned explanation for the determination reached.") Accordingly, I find in favor of the Respondent. For the reasons set forth herein, Applicant's claim is denied. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 Westchester

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

04/17/2025

(Dated)

Mitchell Kleinman

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:
225ece939c4c2f741b1c3dd4a686a92c

Electronically Signed

Your name: Mitchell Kleinman
Signed on: 04/17/2025