

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

Security National Insurance Company
(Respondent)

AAA Case No. 17-25-1381-4888

Applicant's File No. 3406666

Insurer's Claim File No. 7007963679-1-1

NAIC No.

ARBITRATION AWARD

I, Richard Martino, 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: Assignor/patient

1. Hearing(s) held on 08/25/2025
Declared closed by the arbitrator on 08/25/2025

Evan Camhi Esq. from Israel Purdy, LLP participated virtually for the Applicant

Respondent from Security National Insurance Company participated by written submission for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,838.21**, 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

Applicant seeks reimbursement of charges for medical examinations and trigger point injections performed on 8/12/24 and 8/15/24, following a 7/31/24 automobile accident.

The Injured Party/Assignor, a 27-year-old male, was involved in an automobile accident that occurred on 7/31/24.

The issue is whether the claim should be denied, because the maximum No-Fault benefits were paid out.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing.

This case involves a claim for medical examinations and trigger point injections performed on 8/12/24 and 8/15/24, following a 7/31/24 automobile accident.

The Injured Party/Assignor, a 27-year-old male, was involved in an automobile accident that occurred on 7/31/24.

Respondent raises the defense at the hearing that the basic economic loss benefits had maxed out. The maximum was \$50,000 per the policy declaration page.

I have already ruled on the validity of respondent's policy exhaustion defense in AAA Case #17-25-1380-5167.

In an award rendered on 7/21/25, I held as follows:

" 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 550, 790 N.Y.S.2d 216 (2d Dept. 2005).

The insurer's failure to issue a denial of the claim within 30 days does not preclude a defense that the coverage limits of the subject policy have been exhausted. New York and Presbyterian Hospital v. Allstate Ins. Co., 12 A.D.3d 579, 786 N.Y.S.2d 68 (2d Dept. 2004); Crossbridge Diagnostic Radiology v. Encompass Insurance, 24 Misc.3d 134(A), 2009 N.Y. Slip Op. 51415(U), 2009 WL 1911909 (App. Term 2d, 11th & 13th Dists. June 23, 2009).

Therefore, I note that it is legally irrelevant if the defense of the policy maximum having been reached is not raised in the insurer's denial.

Applicant makes an argument that this arbitrator should follow Alleviation Medical Services, P.C. v. Allstate Insurance Co., 2017 N.Y. Slip Op., 27097, 55 Misc. 3d 44, (App. Term 2nd, 11 and 13th Jud. Dists. 2017), in which the Court held that where the insurer issued a denial thereby implicitly declaring that the claim was fully verified, the claim is payable in the order in which it was received.

As a result, the Court denied the insurer's motion for summary judgment dismissing the complaint despite the subsequent exhaustion of available coverage.

Applicant's counsel argued that regardless of the subsequent exhaustion of benefits, since benefits were still available under this policy at the time that the insurer received this claim, Applicant was entitled to reimbursement.

I disagree. I decline to follow Alleviation and choose to follow the decision in Harmonic Physical Therapy v. Praetorian Insurance Company, 47 Misc.3d 137(A), 2015 N.Y. Slip Op. 50525(U) (App. Term 1st Dept. 2015) which holds that timely denied claims do not hold a place in the priority of payment line ahead of subsequently filed claims paid by the Respondent. The No-Fault Regulation permits an insurer to assert a valid defense and then to deny the claim, as it did herein. [See, Ins. Law Sec. 5102; 11 NYCRR 65-1.1].

The respondent's proof confirms that the \$50,000 policy limits had been paid out on this accident.

It also contains the insurance policy that confirms that the maximum no -fault benefits available was \$50,000.00.

Therefore, since the payment of the bill for the services at issue was timely partially denied within the 30-day deadline -the claim must be denied because the \$50,000 policy limit has been reached.

Therefore, the claim is denied in its entirety."

To invoke the doctrine of collateral estoppel, there must be an identity of issues which has been decided in the prior action (and which is decisive in the present action), and the parties must have had a full and fair opportunity to contest the decision now said to be controlling. See: Gilberg v. Barbieri, 53, N.Y.2d 285, 441 N.Y.S.2d 49.

The issue of policy exhaustion has already been determined in a prior arbitration.

Since I have already held that the policy was exhausted, I am bound by the doctrine of collateral estoppel.

Due to the foregoing reasons, the 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 Nassau

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

08/25/2025
(Dated)

Richard Martino

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:
34211096b99b9a6f85a1424ef25d52b4

Electronically Signed

Your name: Richard Martino
Signed on: 08/25/2025