

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

S & M Pharmacy
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-25-1429-3190

Applicant's File No. 434906

Insurer's Claim File No. 0562371380005

NAIC No. 36447

ARBITRATION AWARD

I, Patricia Daugherty, 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

1. Hearing(s) held on 06/02/2026
Declared closed by the arbitrator on 06/02/2026

Neil Menashe from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

Tymesha Smith from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$380.95**, 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

Assignor, "KBDG, a 42-year-old female," was involved in a motor vehicle accident on March 1, 2024. At issue in this case is claim in the amount of \$380.95 for Lidocaine 5% ointment dispensed to Assignor on July 28, 2025. Initially, Respondent timely denied the claim asserting a lack of medical necessity defense. At the hearing, Respondent asserted that the policy limits have been exhausted and that no further payment may be made regardless of the merits of its initial grounds for denying the claim. The issues to be determined are 1.) whether Respondent established that the policy has been

exhausted; 2.) whether Respondent violated the 'priority of payment rule'; and 3.) if the policy has not been exhausted and/or Respondent violated the 'priority of payment rule,' whether Respondent established its lack of medical necessity defense.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in MODRIA and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

It is well settled that an insurer is not required to pay a claim where the policy limits have been exhausted. New York Presbyterian Hosp. v Progressive Cas. Ins. Co., 5 AD 3d 568 (2nd Dept. 2004); Hosp. for Joint Diseases v State Farm Mut. Auto. Ins. Co., 8 AD3d 533 (2nd Dept. 2004).

Once a carrier pays out the full monetary amount limited by the policy, its duties under the contract cease. Presbyterian Hosp. in City of N.Y. v Liberty Mut. Ins. Co., 216 AD2d 448 (2nd Dept 1995); *see also* Presbyterian Hosp. in City of N.Y. v General Acc. Ins. Co. of Am., 229 AD2d 479 (2nd Dept. 1996).

Policy exhaustion is not a defense that must be raised in a timely denial. New York & Presby. Hosp. v. Allstate Ins. Co., 12 A.D.3d 579 (2nd Dept. 2004).

In the instant matter Respondent has uploaded a copy of the insurance policy declaration page establishing that the policy carried a \$50,000.00 Basic PIP limit. Respondent has also provided an itemized payment ledger indicating that the limit has been reached.

After a thorough review of the record, I find that the evidence presented establishes that Respondent has paid out the maximum benefits of the policy.

To the extent that Applicant relies on the holding in Alleviation Med. Svcs. P.C. v. Allstate, 55 Misc.3d 44, (App. Term, 2nd, 11th and 13th Jud. Dists. 2017), asserting that Respondent violated the priority of payment provision, 11 NYCRR 65-3.15, I find that timely denied claims do not hold a place in the priority of payment line ahead of subsequently filed legitimate claims. I find the reasoning and analysis set forth in Harmonic Physical Therapy, P.C. v Praetorian Ins. Co., 47 Misc 3d 137(A)(App. Term 1st Dept. 2015), reflects the correct interpretation of Nyack Hosp. v General Motors Acceptance Corp., 8 NY3d 294 (2007) and the Regulations. In Nyack the Court of Appeals held that a carrier who is waiting for information to verify a claim is not precluded from rendering payment on already verified claims. Specifically, the Court stated that the 'priority of payment rule' did not preclude such payments. The Court did not address the application of the 'priority of payment rule' and policy exhaustion for denied claims; however, it acknowledged that the purpose of the regulations is the prompt resolution of legitimate claims.

Based on the foregoing, Applicant's 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, Patricia Daugherty, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

06/02/2026
(Dated)

Patricia Daugherty

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:
85fb5e5953b0b0adbe5fa80c1256e0bb

Electronically Signed

Your name: Patricia Daugherty
Signed on: 06/02/2026