American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

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| Triborough ASC (Applicant) | | AAA Case No. | 17-25-1423-1803 |
| | | Applicant's File No. | 00156803 |
| - and - | | Insurer's Claim File No. | 03692162-2024 |
| | | NAIC No. | Self-Insured |
| Repwest Insurance Company (Respondent) | | | |

# ARBITRATION AWARD

I, Anne Malone, 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: EIP

1. Hearing(s) held on 07/07/2026
   Declared closed by the arbitrator on 07/07/2026

   Sasha Hochman, Esq. from Drachman Katz, LLP participated virtually for the Applicant

   Matthew Sarles,Esq. from Husch Blackwell LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,033.65**, 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 39 year old EIP reported involvement in a motor vehicle accident on August 20, 2024; claimed related injury and underwent right knee arthroscopic surgery provided at the applicant's facility on June 6, 2025.

   The applicant submitted a claim for these facility services, partial payment of which was made based on its calculation of the correct reimbursable amount pursuant to the applicable fee scheduled and was subsequently denied due to exhaustion of benefits.

   The applicant contends that interest and attorneys' fees are due for this claim.

**The issues to be determined at the hearing are:**

**Whether the respondent established that the no-fault benefits under the policy were exhausted.**

**Whether the applicant is due interest for the claim at issue.**

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Exhaustion

In support of its contention that benefits under the policy at issue were exhausted at the time of the denial the respondent submitted a copy of the declaration page of the policy at issue, a copy of the payment ledger and proof of payment for medical payments and lost wages.

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 policy limits may be asserted by an insurer despite its failure to issue an NF-10 denial of claim form within the requisite 30 day period. New York & Presbyterian Hosp. v. Allstate Ins. Co., 12 A.D.3d 579 (2d Dept. 2004.)

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. Matter of Brijmohan v. State Farm Ins. Co., 92 N.Y.2d 821 (1998.)

Moreover, pursuant to NY Insurance Law §5102(b)(3) "amounts deductible under the applicable insurance policy" are a part of the reimbursed amount."

At the hearing, the applicant argued that the benefits in excess of the policy limits be permitted pursuant to Alleviation Medical Services, PC v Allstate Ins. Co., 2017 NY Slip Op 27097 (App. Term 2d Dept. 2017.)

However, Acuhealth Acupuncture, P.C. a/a/o Lancy Estremera v New York City Transit Authority, 36 N.Y.S.3d 406 (Sup. Ct. Kings County, 2016) which relied upon Merrick Union Free School Dist. v. Merrick Faculty Ass'n., Inc., 87 A.D.3d 536, 928 N.Y.S.2d 60 (2d Dept. 2011) held that "it is well settled that an arbitration award may be vacated upon the ground that the arbitrator exceeded his or her authority by making an award in excess of the limits fixed by the insurance policy" and that "[r]elief granted by an Arbitrator cannot exceed a specifically enumerated limitation on his or her power." The Acuhealth court also relied upon Brijmohan, *supra*.

There are arbitration awards which favor the arguments of both parties regarding this issue. Relying upon the decisions of the Court of Appeals and the First and Second Departments, I find that I do not have the authority to make an award in excess of the no-fault limit, which has been exhausted in this case.

The respondent has preserved its defense in a timely and proper denial of claim based on the exhaustion of benefits. The applicant has failed to rebut the assertion that the benefits were exhausted.

Based on the foregoing, the respondent has established its defense of exhaustion of benefits.

Interest on the partial payment of the bill at issue

The respondent made partial payment for the services at issue pursuant tot the correct reimbursable amount based on the New York Workers' Compensation Medical Fee Schedule, supported by a certified professional fee coder.

The bill was received on June 7, 2025 and was untimely denied on July 17, 2025. Therefore, the applicant is entitled to interest and attorneys' fees from July 8, 2025 to July 17, 2025 on the partial payment of the bill at issue.

**Accordingly, the claim is dismissed with prejudice and the applicant is awarded interest and attorneys' fees as stated above.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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 applicant is AWARDED a non-monetary disposition

A. The insurer shall also compute and pay the applicant interest set forth below. 07/08/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

   Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the $30^{th}$ day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

   Due to late partial payment of this claim the applicant is entitled to interest from July 8, 2025 to July 17, 2025.

B. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of $1,360.00. See 11 NYCRR §65-4.6(d.)

Due to late partial payment of this claim the applicant is entitled to attorneys fees from July 8, 2025 to July 17, 2025.

C. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of CT
SS :
County of Fairfield

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

07/31/2026
(Dated)

Anne Malone

**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:**
fb2149a1216ade45c83651ca6824d8d2

**Electronically Signed**

Your name: Anne Malone
Signed on: 07/31/2026