American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a ETM- ASC Ambulatory Surgery Center of East Tremont (Applicant)	AAA Case No.	17-26-1459-6885
	Applicant's File No.	TLD26-1101674
	Insurer's Claim File No.	25-950683909
- and -	NAIC No.	24279
Progressive Casualty 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 11/04/2026
   Declared closed by the arbitrator on 11/04/2026

   Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

   Jennifer Kilfoyle from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$7,916.95**, 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

   The 39 year old EIP reported involvement in a motor vehicle accident on September 29, 2025; claimed related injury and underwent right knee arthroscopic surgery provided at the applicant's facility on December 4, 2025.

   The applicant submitted a claim for these facility services for which partial payment was made by the respondent based on its calculation of the correct reimbursable amount pursuant to the appropriate fee schedule. Payment of the remainder of the claimed amount was denied due to exhaustion of benefits.

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 respondent established its fee schedule defense.

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.

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.) 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."

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.

Under these circumstances, the fee schedule issue is moot.

Accordingly, the claim is dismissed with prejudice.

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 claim is DENIED in its entirety

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.

11/04/2026
(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:
cff39df434aaff8388ca14e0afa69724

Electronically Signed

Your name: Anne Malone
Signed on: 11/04/2026