American Arbitration Association

NO-FAULT ARBITRATION TRIBUNAL

In the Matter of the Review of the Arbitration between

[redacted] *Applicant*

-and-

[redacted] *Respondent*

AAA CASE NO.: **99-14-1000-7677** INSURER'S FILE NO.:

Insurance Department Case Number:

MASTER ARBITRATION AWARD

I, ANNE L. POWERS, the undersigned MASTER ARBITRATOR, appointed by Superintendent of Insurance and designated by the American Arbitration Association pursuant to the Regulations promulgated by the Superintendent of Insurance as 11 NYCRR 65-4, having been duly sworn, and having reviewed and considered the proofs and allegations of the parties make the following AWARD.

Part I. Summary of Issues in Dispute

Was the No-Fault arbitrator's decision to award benefits to the Applicant despite Respondent's denial based upon the failure of the Applicant to appear at two timely noticed EUO examinations, arbitrary, capricious or incorrect as a matter of law?.

Part II. Findings, Conclusions, and Basis Therefore

According to No-Fault Regulation 11 NYCRR 65-4.5 (o) the arbitrator is to be the judge of the relevance and materiality of all the evidence offered. Specifically, the determination of the arbitrator should not be disturbed absent irrationality, or a conclusion that the arbitrator was incorrect as a matter of law or was arbitrary or capricious in the award rendered. See also, *Allstate Ins. Co. v. Keegan*, 201 A.D.2d 724 (2nd Dept. 1994)

The role of a master arbitrator in reviewing an arbitrator's decision is to determine whether the arbitrator below reached a decision in a rational manner and that the decision was not arbitrary and capricious or incorrect as a matter of law *see*...**Petrofsky vs. Allstate Insurance Company**, 54 NY2d 207, 445 NYS2d 77). The court in Petrofsky further held that the evidence must be

sufficient as a matter of law, to support the determination of the arbitrator. This does not however, constitute a *de novo* review of the matter originally presented to the arbitrator below. See Id. Moreover, "[a]n award may be found on review to be rational if any basis for such conclusion is apparent..." Caso v. Coffey, 41 N.Y. 2d 153,158 (1976). Indeed, "[i]t is well settled that an arbitrator is not required to justify his or her award. It must merely appear that there exists a rational basis for the award. Howard v. Cigna Ins. Co., 193 A.D.2d 745,746 (1993). Accordingly, this is not a *de novo* review of the facts that were already decided upon by the original arbitrator.

I find lower arbitrator decided this claim based upon his review and evaluation of the record as well as the No-Fault Regulations. The arbitrator determined from the documentation presented to him that Respondent submitted all the necessary proof of the Applicant's failure to appear at the EUOs of the Applicant. However, in his decision the arbitrator noted that he had four (4) cases before him regarding the same parties and involving ***the same issue which was that Respondent insurance carrier failed to give notice of their demand to hold the Applicant's EUO to the Applicant, only serving counsel for the Applicant.*** (*emphasis added*)

Respondent's counsel has submitted hundreds of pages of the EIPs record for review in this appeal stating "Geico is not appealing the lower arbitrator's decision on whether verification requests have to be sent to both the Applicant and the Applicant's attorney". Rather the sole issue on appeal is the lower arbitrator's failure to decide whether the applicant violated Section 230d of the Public Health Law, thereby rendering an incomplete award. In reviewing the award at issue on appeal the arbitrator noted the issue before him was the denial of payment of $1,645.56, for treatments rendered to the EIP by the Applicant due to Respondent's denial based upon Applicant's failure to appear at two scheduled Examinations Under Oath.

There was absolutely no mention in the arbitrator's award of the issue now being raised by Respondent/Appellants counsel as to whether the applicant violated Section 230d of the Public Health Law. As noted above this is not a *de novo* review of the facts that were already decided upon by the original arbitrator. I further find that Respondent's counsel's vailed attempt to raise an issue not reported as part of Respondent's denial and not an issue discussed in the lower arbitrator's decision is precluded as a defense in this forum. Based on the foregoing, I find the award below was cogently thought out and clearly articulated and certainly not irrational, arbitrary and capricious or incorrect as a matter of law. Therefore I see no reason to disturb the arbitrator's decision. The award is therefore affirmed in its entirety.

Accordingly,

1. ☐ the request for review is hereby denied pursuant to 11 NYCRR 65-4.10 (c) (4)

2. [X] the award reviewed is affirmed in its entirety

3. ☐ the award or part thereof in favor of ☐ applicant

hereby reviewed is vacated and

☐ respondent

remanded for a new hearing ☐ before the lower arbitrator

☐ before a new arbitrator

4. ☐ the award in favor of the ☐ applicant
hereby reviewed is vacated in its entirety
☐ respondent

—*or*—

5. ☐ the award reviewed is modified to read as follows:

A. The respondent shall pay the applicant no-fault benefits in the sum of

_____ Dollars ($_____), as follows:

Work/Wage Loss	$_____
Health Service Benefits	$_____
Other Reasonable and Necessary Expenses	$_____
Death Benefit	$_____
Total	$_____

B1. ☐ Since the claim(s) in question arose from an accident that occurred prior to April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from _____ at the rate of 2% per month, compounded, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

B2. ☐ Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from at the rate of 2% per month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

C1. [] The respondent shall also pay the applicant Six Hundred Fifty dollars

(for attorney's fees computed in accordance with 11 NYCRR 65-4.6(d). ***The computation is shown below*** (attach additional sheets if necessary).

-or-

C2. ☐ The respondent shall also pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e). However, for all arbitration requests filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

C3. ☐ Since the charges by the applicant for benefits are for billings on or after April 5, 2002, and exceed the limitations contained in the schedules established pursuant to section 5108 of the Insurance Law, no attorney's fee shall be payable by the insurer. See 11 NYCRR 65-4.6(i).

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

PART III. [X] The applicant in the arbitration reviewed, having prevailed in this review,

A. the respondent shall pay the applicant

-Six Hundred Fifty dollars ($650.00- for attorney's fees computed in accordance with 11 NYCRR 65-4.10 (j). The computation is shown below (attach additional sheets if necessary) 10 Hours at $65.00 per hour = $650.00

B. If the applicant requested review, the respondent shall also pay the applicant SEVENTY-FIVE DOLLARS ($75) to reimburse the applicant for the Master Arbitration filing fee.

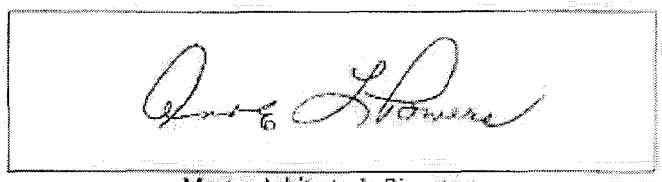
This award determines all of the no-fault policy issues submitted to this master arbitrator pursuant to 11 NYCRR 65- 4.10

State of New York SS:

County of QUEENS

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

June 6, 2016



Date

Master Arbitrator's Signature

IMPORTANT NOTICE

This award is payable within 21 calendar days of the date of mailing. A copy of this award has been sent to the Superintendent of Insurance.

This master arbitration award is final and binding except for CPLR Article 75 review or where the award, exclusive of interest and attorney's fees, exceeds $5,000, in which case there may be court review de novo (11 NYCRR 65- 4.10(h)). A denial of review pursuant to 11 NYCRR 65- 4.10 (c) (4) (Part II (1) above) shall not form the basis of an action de novo within the meaning of section 5106(c) of the Insurance Law. A party who intends to commence an Article 75 proceeding or an action to adjudicate a dispute de novo shall follow the applicable procedures as set forth in CPLR Article 75. If the party initiating such action is an insurer, payment of all amounts set forth in the master arbitration award which will not be subject of judicial action or review shall be made prior of the commencement of such action.

JUN 0 9 2016

Date of mailing: