

American Arbitration Association

NO-FAULT ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

Multi-Specialty Pain Management PC a/a/o

Applicant

–and–

GEICO Insurance Co.

Respondent

AAA ASSESSMENT NO.:	99-17-1070-9572	INSURER'S FILE NUMBER:
No.:		0305745540101088

AAA CASE NUMBER:

MASTER ARBITRATION AWARD

I, Steven Rickman, the undersigned MASTER ARBITRATOR, appointed by the Superintendent of Insurance and designated by the American Arbitration Association pursuant to regulations promulgated by the Superintendent of Insurance at 11 NYCRR 65-4.10, 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

Did the no-fault arbitrator render an award that was arbitrary, capricious, irrational, or incorrect as a matter of law?

Part II. Findings, Conclusions, and Basis Therefor

As required by 11 NYCRR Section 65.4.10 (c) (3), I hereby conclude that the facts alleged in the submitted documents set forth a ground for review pursuant to Subdivision (a) of Section 65-4.10.

Applicant instituted the No-Fault arbitration seeking to be compensated \$3,072.71 for medical services rendered to the EIP from 4/13/17 through 6/6/17 allegedly necessitated by an automobile accident that occurred on 12/22/15. Respondent timely denied the claims (stipulated by the parties) based upon lack of medical necessity (IME of Dr. Sammy Dean on 10/26/16). In an award dated 10/15/18 arbitrator Christopher Persad found in favor of Applicant and awarded the claim in its entirety. Interest was awarded commencing from 8/28/17 (the arbitrator determined that this was the date of the initiation letter). Appellant maintains that the arbitrator assigned an improper start date for when interest is to begin to accrue. Appellant seeks modification of the award with respect to (the accrual date of interest) on the grounds that it is irrational, arbitrary, capricious, and incorrect as a matter of law.

ARBITRATOR PERSAD'S PERTINENT FINDINGS & DETERMINATION

“The insurer shall also compute and pay the applicant interest set forth below. 08/28/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant asserts, for the purposes of calculating interest where there is timely denial of claim form, the date the claim is filed with AAA should be the date upon which interest begins to accrue. Respondent asserts the accrual date should be from the time the claim is initiated by AAA through the issuance of an initiation letter. For the reasons set forth infra, interest should accrue from the date of the initiation letter.

In pertinent part, 11 NYCRR 65-4.5(w) states:

Interpretation and application of procedures. The arbitrator shall interpret and apply these procedures insofar as they relate to the arbitrator's powers and duties. All other procedures shall be interpreted by the designated organization, subject to consultation with and approval by the superintendent. (Emphasis added.)

Pursuant to 11 NYCRR 65-4.5 (w), supra, the Department of Financial Services has determined that the date that interest shall accrue from shall be deemed to be the date that the case is initiated by the American Arbitration Association. The initiation date is the date that AAA notifies the parties that the case has been initiated through an initiation letter. The parties were advised of this procedural change through a press release issued by the American Arbitration Association which indicated:

After consultation with the Department of Financial Services, we are writing to advise you that the filing date for an arbitration filed in the no-fault forum under the rocket docket provisions of the regulation shall be deemed to be the date that the case is initiated by the American Arbitration Association. This date is the date that AAA determines that the applicants' filing is in compliance with the Regulations and that the applicant has sufficient funds in its' account for the applicable filing fee. The AAA then assigns a case number and notifies the parties that the case has been initiated. The date of the notification is deemed to be the filing date.

This notice to the parties is in line with the no-fault regulations as it advises of a procedural interpretation following "consultation and approval by the superintendent" of the Department of Financial Services. Id. Therefore, interest shall accrue from the initiation date assigned by the American Arbitration Association."

THE ROLE OF THE MASTER ARBITRATOR

A master arbitrator is limited in his ability to review. Pursuant to the Court of Appeals in Matter of Petrofsky v. Allstate Ins. Co., 54 N.Y.2d 207 (1981), a master arbitrator may not engage in an extensive factual review (a de novo review of the matter originally presented to the lower arbitrator), weigh and assess the credibility of the evidence, and then on that basis make independent findings of fact.

It is for the arbitrator below to determine what evidence or testimony to accept or reject, and what inferences should be drawn as supported by the evidence. The evaluation of the weight, credibility, persuasiveness, and admissibility of the evidence is exclusively within the province of the lower arbitrator. Pursuant to NYCRR 65-4.10(a)(4) an award may be vacated or modified upon the grounds that it is incorrect as a matter of law. However, "A master arbitrator exceeds his statutory power by making his own factual determination, by reviewing factual and procedural errors committed during the course of the arbitration, by weighing the evidence, or by resolving issues such as the credibility of the witnesses." Matter of Richardson v. Prudential Property & Cas. Co., 230 A.D.2d 861(2d Dept 1996); Matter of Allstate Insurance Co. v. Keegan, 201 A.D.2d 774 (2d Dept 1994); Mott v. State Farm Insurance Co., and Smith v. Firemens Insurance Co., 55 N.Y.2d 224 (1982).

LEGAL ANALYSIS

Arbitrator Persad made a legal determination that all interest shall accrue starting from 8/28/17 which was the date of the AAA initiation letter. I find this to be incorrect as a matter of law. Assistant Vice President of the AAA, Benjamin Carpenter, after consultation with the Department of Financial Services, issued a clarifying statement dated 6/29/18. Therein the letter indicates that the date of the AAA initiation letter is deemed the filing date for determining the timeliness of submission of documents for purposes of the rocket docket provisions. Mr. Carpenter's letter further explains his previous advice did not address the dates that determine how payment of the interest penalty for denied claims are to be calculated pursuant to 11 NYCRR Section 65-3.9(c). (the tolling provision). For this provision the date that an arbitration is requested by an applicant is determined when the applicant comports with the procedures set forth in 11 NYCRR-65-4.2(b)(1). This date is distinct from the required rocket docket provisions for document submission in 11 NYCRR Section 65-4.2(B)(3) (i) and (ii).

Based on the evidence submitted to the undersigned the date Applicant complied with the procedures under 11 NYCRR 65-4.2(b)(1) was 8/18/17. This is the controlling date for determining whether the bills are subject to the tolling provision and when interest shall accrue.

Insurance Law Section 5106 (a) provides that first party benefits are overdue if not paid within 30 days after the claimant supplies proof of the fact and amount of loss sustained. All overdue payments shall bear interest at the rate of two percent per month.

11 NYCRR 65-3.8 (a)(1) provides that No-Fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of the claim, which shall include verification of all of the relevant information requested pursuant to section 65-3.5 of this subpart.

11 NYCRR 65-3.9 Interest on overdue payments. (a) All overdue mandatory and additional personal injury protection benefits due an applicant or assignee shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30 day month...

(c) If 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, interest shall not accumulate on the disputed claim or element of claim until such action is taken.

If Applicant commences an arbitration within 30 days after the receipt of a denial of claim form, interest will start running on the date the claim is overdue-30 days after the claim is presented to the Respondent for payment until the claim is paid. See, All Boro Psychological Services, P.C. v. GEICO General Ins. Co., 38 Misc.3d 268 (2012); Corona Hgts. Med., P.C. v. Liberty Mutual Ins. Co., 2011 NY Slip Op 21130, 32 Misc.3d 8 (App. Term, 2d Dept.). I reject Respondent's argument that timely denied claims are not overdue based on the aforesaid statutory and regulatory definitions of the term "overdue". Furthermore, in Carnarsie Medical Health, P.C. v. National Grange Mut. Ins. Co., 21 Misc.3d 791 (Sup. Ct., NY Co. 2008), the Court indicated that 11 NYCRR 65-3.9 (c) provides that where the insurer timely denies, then the applicant is to seek redress within 30 days, after which interest will accrue.

Based on a review of the submitted documents all bills except for two both involving date of service 6/6/17 (bills for \$965.43 and \$67.60) are subject to the tolling provision because Applicant's filing date 8/18/17 was not within 30 days of receipt of the denial. For these bills interest shall accrue starting from 8/18/17. As to the two bills not subject to the tolling provision, to wit:

Bill for date of service 6/6/17 (\$965.43) was received on 7/10/17. It was denied on 7/20/17. Applicant commenced filing on 8/18/17 which was within 30 days of the denial. I agree with Applicant that this bill became overdue on 8/9/17. Interest on that bill shall accrue starting from 8/9/17.

Bill for date of service 6/6/17 (\$67.60) was received on 7/10/17. It was denied on 7/20/17. Applicant commenced filing on 8/18/17 which was within 30 days of receipt of the denial. I agree with Applicant that this bill became overdue on 8/9/17. Interest on that bill shall accrue starting from 8/9/17.

To reiterate, as to all other bills interest shall accrue starting 8/18/17 the correct filing date for purposes of calculating interest.

The award shall be modified in accordance with the above findings. Respondent shall get credit for all monies paid to date pursuant to unmodified award (principal, interest, and attorney fees). Applicant shall also be entitled to additional attorneys based on the additional interest awarded.

Accordingly,

1. ☐ the request for review is hereby denied pursuant to 11 NYCRR 65-4.10 (c) (4)
2. ☐ 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

Same as unmodified award. _____ 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 See immediately below 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).

Based on a review of the submitted documents all bills except for two both involving date of service 6/6/17 (bills for \$965.43 and \$67.60) are subject to the tolling provision because Applicant's filing date 8/18/17 was not within 30 days of receipt of the denial. For these bills interest shall accrue starting from 8/18/17. As to the two bills not subject to the tolling provision, to wit:

Bill for date of service 6/6/17 (\$965.43) was received on 7/10/17. It was denied on 7/20/17. Applicant commenced filing on 8/18/17 which was within 30 days of the denial. I agree with Applicant that this bill became overdue on 8/9/17. Interest on that bill shall accrue starting from 8/9/17.

Bill for date of service 6/6/17 (\$67.60) was received on 7/10/17. It was denied on 7/20/17. Applicant commenced filing on 8/18/17 which was within 30 days of receipt of the denial. I agree with Applicant that this bill became overdue on 8/9/17. Interest on that bill shall accrue starting from 8/9/17.

To reiterate, as to all other bills interest shall accrue starting 8/18/17 the correct filing date for purposes of calculating interest.

The award shall be modified in accordance with the above findings. Respondent shall get credit for all monies paid to date pursuant to unmodified award (principal, interest, and attorney fees). Applicant shall also be entitled to additional attorneys based on the additional interest awarded.

C1. ☐ The respondent shall also pay the applicant _____ 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. (Complete if applicable.) The applicant in the arbitration reviewed, having prevailed in this review,

- A. the respondent shall pay the applicant One Hundred Thirty Dollars (\$130.00) for attorney's fees computed in accordance with 11 NYCRR 65-4.10 (j). The computation is shown below (attach additional sheets if necessary) 2hrs at \$65.00 per hr.
- 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 Florida

County of Palm Beach

☐ SS:

I, Steven Rickman 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.

1/30/19

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.

Date of mailing:_____