

American Arbitration Association

NO-FAULT ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

Paragon Neuromonitoring LLC a/a/o [Injured Party]

Applicant

–and–

American Transit Insurance Company

Respondent

AAA ASSESSMENT NO.: 99-21-1205-7308 INSURER'S FILE NUMBER: 1073387-01

AAA CASE NUMBER: 17-21-1205-7308

MASTER ARBITRATION AWARD

I, Joseph J. O'Brien Jr., 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 heard the proofs and allegations of the parties on December 13, 2022, make the following AWARD.

Part I. Summary of Issues in Dispute

Whether the No-Fault arbitrator's decision was arbitrary, capricious and/or incorrect as a matter of law.

Part II. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR 65-4.10(C)(3), I find that the facts alleged in the submitted documents set forth a proper ground for review pursuant to subdivision (A) of section 65-4.10 and that the request for master arbitration was properly made in accordance with subdivision (d)(1) and (2) of that section.

The review of this award is limited to the standards set forth in CPLR Article 75 and which was defined by the Court of Appeals in *Matter of Petrofsky v. Allstate Insurance Company*, 54 NY2d 207 (1981) as follows:

In cases of compulsory arbitration, this Court has held that article 75 of the CPLR "includes review . . . of whether the award is supported by evidence or

other basis in reason.” *Mount St. Mary’s v. Catherwood*, 26 NY 2d 493. This standard has been interpreted to import into article 75 review of compulsory arbitrations the arbitrary and capricious standard of article 78 review. *Caso v. Coffey*, 41 NY2d 153, 158; Siegel, *New York Practice*, Sec. 603, pp. 865-866. In addition, article 75 review questions whether the decision was rational or had plausible basis. *Id.*

The Court in *Petrofsky* also held that a master's powers of review do not encompass a *de novo* review of the matter presented to the lower arbitrator and do not authorize the master arbitrator to determine the weight or credibility of the evidence.

A master arbitrator may not substitute his judgment for that of the arbitrator. *See, Matter of Aleman*, 62 N.Y.2d 1017 (1984).

The grounds for review also include that the decision was incorrect as a matter of law. 11 NYCRR 65-4.10(a)(4).

Respondent/appellant herein requests review of the August 18, 2022 Arbitration Award which awarded the request of applicant/respondent herein for reimbursement of its fee for provision of its facility for a lumbar discectomy done on September 17, 2020 in treatment of injuries sustained by assignor herein in a motor vehicle accident on November 8, 2019.

Respondent's argument relies entirely on case law that respondent states held that,

In order for an applicant to prove that the services were medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. (*See, Pan Chiropractic, P. C. v. Mercury Ins. Co.*, 24 Misc. 3d 136(A) (App. Term 2d, 11th & 13th Dists. (2009).

Respondent adds, "[Applicant/] Respondent in the case at bar failed to offer any rebuttal at all”

This and other case law cited by respondent is applicable only where a rebuttal is necessary. But even then, the applicant may choose to rely on its own medical records and argument at the arbitration if this is the strategy applicant wishes to pursue.

In the course of setting out the logic of the arbitrator's award, applicant argues that the arbitrator turned his attention “. . . to Applicant’s side that argued that the Respondent failed to submit the medical records reviewed by the peer review doctor to substantiate his denial of the surgery.”

The arbitrator also states that, " Dr. Appel fails to cite to any accepted medical standard when performing a lumbar discectomy.” and that, " There is no evidence submitted by the Respondent to show that the injuries related to the surgery were not causally related to the accident.” The arbitrator continued,

Respondent claims that the injures are not related to the accident based upon the review of Dr. Peyser. There is no review from Dr. Peyser. Dr. Appel notes that the

injuries were not causally related to the accident and I disagree based upon my analysis of the medical records."

The arbitrator then concluded,

Failing to mention the applicable generally accepted medical/professional standard and [Applicant's] departure from it denudes the [respondent's] proof of a prima facie case of lack of medical necessity." Cambridge Medical, P.C. v. GEICO, 18 Misc.3d 1144(A), 859 N.Y.S.2d 893 (Civ. Ct. Richmond 2008).

Respondent's brief does not address any of these effectively dispositive statements by the arbitrator. On the facts of respondent's case, a rebuttal was not necessary; respondent's case failed on its face.

Accordingly, we find that the award appealed from was neither arbitrary nor capricious and was not in error as a matter of law.

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

_____ 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 _____ 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 and ninety-five and no/100 dollars (\$195.00) for attorney's fees computed in accordance with 11 NYCRR 65-4.10 (j). The computation is shown below (attach additional sheets if necessary)

Based on attorney fee awards for comparable work, counsel is awarded \$65 per hour for three total hours required to prepare and draft the appellate brief. See, 11 NYCRR 65-4.10(j)(2)(i). Accordingly, the total attorney fee awarded is onehundred and ninety-five dollars and no/100 (\$195.00).

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

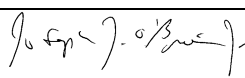
State of Pennsylvania

County of Northampton ☐ SS:

I, Joseph J. O'Brien Jr., 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.

December 13, 2022

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:_____