American Arbitration Association

NO-FAULT ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

37th Avenue Medical PC/ *Applicant*

-and-

State Farm Mutual Automobile Insurance Company *Respondent*

AAA ASSESSMENT NO.: 99-17-1061-0001 INSURER'S FILE NUMBER: 32-V840-900

AAA CASE NUMBER:

MASTER ARBITRATION AWARD

I, _Victor J. D'Ammora, 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 _____ , make the following AWARD.

Part I. Summary of Issues in Dispute

The issue before the lower arbitrator was whether the Respondent properly denied the claim for medical services based upon a statute of limitation defense. The lower arbitrator denied the claim. The Applicant seeks to overturn the award of the lower arbitrator.

The issue before me is whether Arbitrator Wiener's decision to deny the claim in that amount was arbitrary, capricious 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 determine 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 N.Y. 2d 207 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 N.Y. 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 N.Y.2d 153, 158, Siegel, New York Practice, Section 603, pp. 865-866). In addition, Article 75 review questions whether the decision was rational or had plausible basis. (Caso v. Coffey, 41 N.Y.2d 153, supra)."

The grounds for review also include that the decision was incorrect as a matter of law (11 NYCRR 65-4.10(a)(4). However, "(The) 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 the issues such as the credibility of the witnesses.'" Matter of Richardson v. Prudential Property & Casualty Co., 230 A.D. 2d 861; Mott v. State Farm Insurance Company, 55 N.Y. 2d 224.

The lower arbitrator conducted a hearing and reviewed all of the evidence including the applicable law. Arbitrator Wiener determined that the Applicant was notified of the denial on January 24, 2011 and the Applicant commenced the arbitration proceeding more than six years later. The lower arbitrator further determined that the Applicant continued to treat the EIP despite this knowledge. Arbitrator Wiener concluded there was no injustice in this case since the Applicant took no action until after six years. And as such denied the claim.

I agree with the lower arbitrator's analysis and conclusions. Arbitrator Wiener did an extensive review of the law and the evidence in this case.

Moreover, I find that the arbitrator's award should not be disturbed in accordance within the standards set forth above.

I cannot conclude on the basis of the record before me that Arbitrator Wiener's decision was incorrect as a matter of law or arbitrary and capricious. Therefore, I must affirm the award.

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 X applicant ☐ respondent hereby reviewed is vacated and

remanded for a new hearing ☐ before the lower arbitrator ☐ before a new arbitrator

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

—*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 re-

spondent'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 ---------- ($ for attorney's fees computed in accordance with 11 NYCRR 65-4.10 (j). The computation is shown below (attach additional sheets if necessary)

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

County of Westchester ☐ SS:

I, Victor J. D'Ammora_, 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.

4/25/2018

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: _____