

American Arbitration Association
NO-FAULT ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

Isurply LLC a/a/o

Applicant

-and-

State Farm Mutual Automobile Insurance Company

Respondent

AAA ASSESSMENT NO.: 99-17-1066-5274 INSURER'S FILE NUMBER: XXXXXXXXXX

AAA CASE NUMBER:

MASTER ARBITRATION AWARD

I, Peter J. Merani, 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 N/A , make the following AWARD.

Part I. Summary of Issues in Dispute

The claim before the no-fault arbitrator below was for payment in the amount of \$4,744.50 for CTU and CPM rental equipment.

The Respondent insurer had denied the claim based on a peer review report and also raised the fee schedule defense.

After hearing the lower arbitrator found for the Respondent insurer and denied the claim.

The Applicant appeals and requests master review on various ground including that the award below was arbitrary, capricious and incorrect as a matter of law.

Part II. Findings, Conclusions, and Basis Therefor

In this case the Respondent insurer had issued a denial based upon the peer review report that opined that there the rental equipment was not medically necessary and further that the alleged injuries were not even causally related to the accident. Both sides participated in the hearing below.

The lower arbitrator held a hearing on the issues in this case and in the award reviewed the evidence submitted and wrote a decision finding for the Respondent insurer. As the arbitrator found for the Respondent insurer on the necessity issue the fee dispute issue was found to be moot.

The arbitrator found the Respondent insurer based on the peer review report met its burden of establishing that the services rendered were not medically necessary and also establishing a sufficient basis for denying the claim in that the alleged injuries and surgery were not causally related to the accident.

The Applicant argues that the arbitrator's decision was arbitrary, capricious and incorrect as a matter of law. The Applicant argues the arbitrator misapplied the law as to the Respondent insurer's burden of proof. The Applicant argues that the Respondent failed to establish lack of medical necessity of the rental equipment. The Applicant argues that the peer review report addressed the medical necessity of the surgery but not the medical necessity of the rental equipment. Applicant points out that the medical necessity of the surgery and the rental equipment are separate issues. The Applicant cites other arbitrator and master arbitrator decisions on this issue and those awards agreed with the Applicant provider's position. However the Respondent insurer also cites awards by an arbitrator and master arbitrator finding for the Respondent insurer on the issue in this matter. Additionally the awards cited by the Applicant centered on the medical necessity issue and in the instant matter the award of the lower arbitrator is distinguishable from those other awards. The lower arbitrator in the instant case points out that the rental equipment was not medically necessary as the injuries allegedly requiring the surgery and the post surgery rental equipment were not causally related to the accident.

The lower arbitrator in the award analyzed the evidence and made findings based on the evidence. In this case the arbitrator reviewed the evidence submitted by both parties and found the Respondent insurer's peer review report reasoning to be persuasive. The arbitrator below based his decision on the evidence and in the decision the arbitrator cites the reasons for the findings made and refers to the evidence and documents relied upon by the arbitrator to arrive at the findings.

The role of the master arbitrator 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. (*Petrofsky v. Allstate Insurance Company*, 54 NY2d 207, 445 NYS2d 77). The court in the *Petrofsky* case further held that the master arbitrator's power of review does not constitute a *de novo* review but instead is limited to whether or not the evidence is sufficient, as a matter of law, to support the determination of the arbitrator.

Based upon a review of the record before me, I find the arbitrator arrived at his decision in a rational manner and the decision was based on the evidence before the arbitrator and that the evidence was sufficient for the arbitrator to make his findings and support his determination.

Accordingly, I find the award below was not irrational, arbitrary and capricious or incorrect as a matter of law and 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. 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
----- dollars (\$----- 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 NASSAU SS:

I, Peter J. Merani, 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.

May 29, 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: _____

JUN 05 2018