

# Procedures for New York State No-Fault Master Arbitration

Effective for Requests Filed with the New York State Insurance Department on or after July 1, 1988, for Disputes Involving First-Party Benefits Arising from Accidents Occurring on or after December 1, 1977, and disputes Involving Additional First-Benefits Arising from Accidents Occurring on or after January 1, 1982, adopted pursuant to regulations promulgated by the New York State Superintendent of Insurance.

As Amended on August 14, 1991

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## Introduction

The optional arbitration provisions contained in the Comprehensive Automobile Insurance Reparations Act--New York's no-fault law--were amended as of December 1, 1977, for accidents occurring on or after December 1, 1977.

Under section 5106 of the amended Insurance Law, an award rendered by an arbitrator may be vacated or modified by a master arbitrator in accordance with simplified procedures to be promulgated or approved by the Superintendent of Insurance. Pursuant to these procedures, codified at 11 NYCRR 65.18, the American Arbitration Association is the statewide administrator of master arbitrations. Requests for

master arbitration must be mailed directly to the office of the American Arbitration Association that covers the region in which the lower case was decided, along with the appropriate fee set forth in the regulations.

The regulations for master arbitration were amended effective for all requests for master arbitration received by the AAA on or after July 1, 1988. Procedures based on the amended regulations are contained in this pamphlet.

The American Arbitration Association is privileged to assist in the implementation of New York's amended no-fault law by administering the master-arbitration system.

## **Procedures for New York State No-Fault Master Arbitration**

Section 65.18 Master arbitration procedures under section 5106(b) of the Insurance Law with respect to personal injuries sustained on and after December 1, 1977.

### **(a) Grounds for Review**

An award by an arbitrator rendered pursuant to section 5106(b) of the Insurance Law and 11 NYCRR 65.16 and 65.17 (Regulation No. 68) may be vacated or modified solely by appeal to a master arbitrator and only upon one or more of the following grounds:

- (1) any ground for vacating or modifying an award enumerated in Article 75 of the Civil Practice Law and Rules (an Article 75 proceeding), except the ground enumerated in CPLR section 7511(b)(1)(iv) (failure to follow Article 75 procedure);
- (2) that the award required the insurer to pay amounts in excess of the policy limitations for any element of first-party benefits; provided that, as a condition precedent to review by a master arbitrator, the insurer shall pay all their amounts set forth in the award which will not be subjects of the appeal, as provided for in sections 65.16 or 65.17;
- (3) that the award required the insurer to pay amounts in excess of the policy, limitations for any element of additional first-party benefits (when the parties had agreed to arbitrate the dispute under the additional personal injury protection endorsement for an accident which occurred prior to January 1, 1982), provided that, as a condition precedent to review by a master arbitrator, the insurer shall pay all other amounts set forth in the award which will not be subjects of the appeal, as provided for in 11 NYCRR 65.16 or 65.17;
- (4) that an award rendered in an AAA expedited arbitration under 11 NYCRR 65.16(c)(3)(i), a regular AAA arbitration under 11 NYCRR 65.16(c)(3)(iv), or an arbitration under 11 NYCRR 65.17 was incorrect as a matter of law (procedural or factual errors committed in the arbitration below are not encompassed within this ground);
- (5) that the attorney fee awarded by an arbitrator below was not rendered in accordance with the limitations prescribed in 11 NYCRR 65.16(c)(8) or 65.17(b)(6), provided that, as a condition precedent to review by a master arbitrator, the insurer shall pay all other amounts set forth in the award which will not be subjects of the appeal, as provided for in 11 NYCRR 65.16 or 65.17;
- (6) that the award rendered in the AAA arbitration is inconsistent and irreconcilable with the award rendered in the HSA arbitration involving the same personal injury.

## **(b) Qualifications of Master Arbitrators**

- (1) A master arbitrator shall be an attorney licensed to practice law in New York State who has at least fifteen years' experience which the superintendent has determined qualifies such attorney to review and resolve the issues involved in no-fault insurance disputes. Documentation of such experience shall be submitted to and reviewed by the superintendent prior to appointment of a master arbitrator.
- (2) All master arbitrators shall be appointed by and serve at the pleasure of the superintendent. A master arbitrator candidate shall disclose to the superintendent any circumstance which is likely to create an appearance of bias or which might disqualify such person as a master arbitrator, and the superintendent shall determine whether the candidate should be disqualified. The superintendent shall forward the names of all master arbitrators to the American Arbitration Association and promptly inform it of all additions to and deletions from the panel.
- (3) No person shall, during the period of appointment as a master arbitrator, also serve as an arbitrator under the optional arbitration systems prescribed in section 5106(b) of the Insurance Law and 11 NYCRR 65.7, 65.16, and 65.17 or serve as an attorney to a party to any such arbitration.
- (4) All master arbitrators shall take an oath of office.
- (5) No person shall serve as a master arbitrator in any master arbitration in which such person has any financial or personal interest or bias. If a party challenges a master arbitrator, the specific grounds for the challenge shall be submitted in writing to the AAA, which, in consultation with the superintendent, shall determine within fifteen calendar days after receipt of the challenge whether the master arbitrator should be disqualified. Such determination shall be final and binding. If a master arbitrator should resign, be disqualified, or be otherwise unable to perform necessary duties of the office, the AAA shall assign another master arbitrator to the case within seven calendar days after receipt of notice thereof.

## **(c) Scope of Master Arbitration Review**

- (1) Review by a master arbitrator shall be based solely on submitted documents, including any record made of the arbitration below, unless a master arbitrator requires oral argument on specified issues.
- (2) Legal briefs shall not be submitted unless requested by the master arbitrator.
- (3) The master arbitrator shall initially consider and determine whether the facts alleged in the submitted documents set forth a ground for review pursuant to subdivision (a) of this section, and whether the request for arbitration was made in accordance with subdivision (d)(1) and (2) of this section.
- (4) If the master arbitrator determines that either subdivision (a) or subdivision (d)(1) or (2) of this section has not been complied with, the master arbitrator shall, in lieu of rendering an award, deny the request for review. The procedural requirements contained in this section applicable to a master award shall also be applicable to a denial of request for review but such denial shall not form the basis of an action de novo, within the meaning of section 5106(b) of the Insurance Law.
- (5) If the master arbitrator determines that subdivisions (a) and (d)(1) and (2) of this section have been complied with, the master arbitrator shall proceed to review the matter and render an award accordingly.
- (6) The master arbitrator shall only consider those matters which were the subject of the arbitration below or which were included in the arbitration award appealed from.

#### (d) Procedure for Review

(1) If grounds exist pursuant to subdivision (a) of this section, any party to an arbitration may request that the arbitration award be vacated or modified by a master arbitrator.

(2) The request for review by a master arbitrator shall be in writing and shall be mailed or delivered to the American Arbitration Association office which processed the lower arbitration or, in other cases, the AAA office covering the region in which the applicant resides:

(i) within fifteen calendar days of the mailing of an award rendered in an AAA expedited arbitration, or

(ii) within 21 calendar days of the mailing of any other appealable award.

The request shall include a copy of the award in issue and shall state the nature of the dispute and the grounds for review. A request by an applicant for benefits shall be accompanied by a filing fee of \$75, payable by check or money order to the American Arbitration Association. Upon the filing of a demand for arbitration by an applicant, the AAA shall bill the respondent insurer the sum of two hundred fifty \$250, which shall be payable by the insurer within thirty days after billing. A request by an insurer shall be accompanied by a filing fee of \$325, payable by check or money order to the American Arbitration Association.

(3) The applicant for master arbitration shall send, by certified mail, a copy of the filing papers to the opposing party at the same time that it submits the request for review to the AAA.

(4) Within seven calendar days of receipt of the request, the AAA shall assign a master arbitrator, selected in sequence from a panel of master arbitrators appointed by the superintendent and shall forward to the master arbitrator a copy of the request for review.

(5) The master arbitrator shall render an award no later than ninety calendar days after assignment.

(i) Submission of Materials Within fifteen calendar days after assignment, the master arbitrator shall set a date (which date shall not be more than 45 calendar days after assignment) by which all evidence, documents and briefs, if any, must be submitted to the master arbitrator by the parties. The master arbitrator shall give the parties thirty calendar days' written notice of this date.

(ii) Oral Argument If, after receipt of these materials the master arbitrator determines that oral argument on specific issues is necessary, the master arbitrator shall give the parties ten calendar days' notice of the place, time, and date for oral argument and the issues to be argued. Oral argument shall be conducted at the office of the master arbitrator, at the office of the American Arbitration Association, or at a location agreeable to the parties and the master arbitrator.

(iii) The master arbitrator may postpone or adjourn the date for submission of materials or of oral argument to a date within the ninety-day period for good cause shown. A postponement or adjournment shall also be granted when all the parties agree thereto. The postponement or adjournment shall not extend the ninety-day period for rendering of an award.

(6) The failure of a master arbitrator to adhere to the procedural time frames, contained in paragraph (5) of this subdivision, shall not affect the validity of an award.

(7) Any party may be represented in a master arbitration by an attorney.

(8) A master arbitration shall proceed if any party, after due notice of the date to submit materials or the date of oral argument, falls to appear, to submit materials, or to obtain a postponement or adjournment.

However, an award shall not be made in favor of an appealing party solely on the default of another party. A master arbitrator shall direct the appearing party to submit such materials as may be required in order to render a decision in the matter.

## **(e) Awards by Master Arbitrators**

### **(1) Form and Scope of Awards**

(i) The award shall be in writing in a format approved by the superintendent. It shall state the issues in dispute and contain the master arbitrator's findings and conclusions based on the materials submitted. It shall be signed by the master arbitrator and shall be transited to the parties by the AAA with a copy to the Insurance Department. The award shall be determinative of all issues submitted to the master arbitrator by the parties.

(ii) If the applicant for benefits prevails in whole or in part on the claim, the award shall also direct the insurer to:

(a) if the applicant requested review by a master arbitrator, pay to the applicant reimbursement of the amount of the master arbitration filing fee paid;

(b) reimburse the applicant for the filing fee originally paid to the Insurance Department for the arbitration below, unless the filing fee had already been returned to the applicant pursuant to an earlier award;

(c) if due under section 5106 of the Insurance Law, pay a reasonable attorney fee in accordance with the limitations set forth in subdivision (k) of this section;

(d) if due, compute and pay the amount of interest for each element of first-party benefits in dispute, commencing thirty days after proof of claim therefore was received by the insurer and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65.15(h) (3) (stay of interest).

(2) Awards upon Settlement If the parties settle their dispute during the course of the master arbitration, the master arbitrator shall set forth the terms of the agreed settlement in an award which shall provide that the parties agree that the settlement is final and binding and shall not be subject to review by a court or the subject of a de novo court action. The award shall be signed by the master arbitrator and shall be transmitted to the parties by the AAA with a copy to the Insurance Department.

(3) Delivery of Awards to Parties The parties shall accept as delivery of the award the placing of the award or a true copy thereof in the mail, addressed to the parties or their designated representatives at their last known addresses, or by any other form of service permitted by law. The AAA shall note in such award or transmittal letter thereof the date of mailing and keep a record of same.

(4) Payment of Awards Subject to subdivision (i) below, the insurer shall, within 21 calendar days of the date of mailing of the award, pay the amounts set forth in the award. The award need not be confirmed into judgment.

## **(f) Adjustment of Fees**

(1) If the master arbitrator's award reverses in whole an AAA arbitration or AAA expedited arbitration award which was adverse to an insurer, the AAA shall reimburse the insurer its filing fee paid by the applicant insurer in the arbitration below. The reimbursement shall, in accordance with 11 NYCRR 65.16(c)(7)(xxiii)(a) and (b), be charged to the cost of administering the AAA arbitration for a below.

(2) If the master arbitrator's award reverses in whole an AAA arbitration or AAA expedited arbitration award which was adverse to the applicant, the AAA shall bill the insurer the filing fee refunded below pursuant to 11 NYCRR 65.16(c)(7)(xxiii)(a) and (b). Such payments shall reduce the cost of administering the AAA arbitration fora below.

### **(g) Interpretation and Application of Procedures**

The master arbitrator shall interpret and apply the procedures of this section insofar as they relate to the master arbitrator's powers and duties. All other procedures shall be administered by the AAA, subject to consultation with and approval by the superintendent.

### **(h) Alternative Legal Remedies**

The AAA or the master arbitrator shall transmit to the superintendent copies of any legal papers served upon the AAA or the master arbitrator relating to any stay or appeal of a master arbitration.

### **(i) Appeals from Master Arbitrators' Awards**

(1) A decision of a master arbitrator is final and binding except for:

(i) court review pursuant to an Article 75 proceeding; or

(ii) if the award of the master arbitrator is \$5,000 or greater, exclusive of interest and attorney fees, either party may, in lieu of an Article 75 proceeding, institute a court action to adjudicate the dispute de novo .

(2) 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 subjects of judicial action or review shall be made prior to the commencement of such action.

### **(j) Master Arbitrators' Fees**

The master arbitrator shall be compensated in the amount of \$250 for each case. Such fee will be paid by the AAA. The master arbitrator's fee shall be charged to the cost of administering the master arbitration system.

### **(k) Limitations on Attorney Fees Pursuant to Section 5106 of the Insurance Law**

The following limitations shall apply to the payment by insurers of applicants' attorney fees for services rendered in a master arbitration to resolve a no-fault dispute.

(1) The minimum attorney fee payable pursuant to this section shall be \$60.

(2)(i) For preparatory services necessarily rendered, the attorney shall be entitled to receive a fee of up to \$65 per hour, subject to a maximum fee of \$650.

(ii) An attorney shall be entitled to receive a fee of up to \$80 per hour for oral argument before the master arbitrator, made pursuant to subdivision (c)(1).

(iii) if an applicant is successful in obtaining a reversal of the arbitration(s) below, wherein no attorney fee was awarded, the attorney in the arbitration below shall also be entitled to receive a fee, computed in accordance with the provisions of 11 NYCRR 65.16(c)(8) or 65.17(b)(6), which shall be payable in the

manner provided in 11 NYCRR 65.16 or 65.17.

(3) Notwithstanding the above limitations, if the master arbitrator determines that the issues in dispute were of such a novel or unique nature as to require extraordinary skills or services, the master arbitrator may award an attorney fee in excess of the limitations set forth above. An excess fee award shall detail the specific novel or unique nature of the dispute which justifies the award.

(4) The attorney fee for services rendered in connection with a court adjudication of a dispute de novo, as provided in section 5106(c) of the Insurance Law, or in a court appeal from a master arbitration award and any further appeals shall be fixed by the court adjudicating the matter.

(5) No attorney shall demand, request, or receive from the insurer any payment or fee in excess of the fees permitted by this subdivision for services rendered with respect to a no-fault master arbitration dispute.

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