

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH OCTOBER 24, 2003 ***

TITLE 11. INSURANCE DEPARTMENT

CHAPTER III. POLICY AND CERTIFICATE PROVISIONS

SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE

PART 65. * (REGULATION 68) REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR
VEHICLE INSURANCE REPARATIONS ACT

11 NYCRR § 65.19 (2003)

§ * 65.19 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 section 65.17 or 65.18 of this Part (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 other amounts set forth in the award which will not be the subject of an appeal, as provided for in section 65.17 or 65.18 of this Part;

(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 the subject of the appeal, as provided for in section 65.17 or 65.18 of this Part;

(4) that an award rendered in an arbitration under section 65.17 or 65.18 of this Part, 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's fee awarded by an arbitrator below was not rendered in accordance with the limitations prescribed in section 65.17(b) (6) or 65.18(f) of this Part; 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 the subject of the appeal, as provided for in section 65.17 or 65.18 of this Part.

(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 15 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 designated organization, 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 sections 65.17 and 65.18 of this Part, nor 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 designated organization which, in consultation with the superintendent, shall determine within 15 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, the designated organization 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 paragraphs (d)(1) and (2) of this section.

(4) If the master arbitrator determines that either subdivision (a) or paragraph (d) (1) or (2) of this section have 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 subdivision (a) and paragraphs (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 office of the designated organization which processed the lower arbitration or, in other cases, the designated organization's office covering the region in which the applicant resides, within 21 calendar days of the mailing of the 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 designated organization. A request by an insurer shall be accompanied by a filing fee of \$325, payable by check or money order to the designated organization.

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

(4) Within seven calendar days of receipt of the request, the designated organization 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 90 calendar days after assignment.

(i) Submission of materials. Within 15 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 30 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 10 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, the office of the designated organization 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 90-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 90-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 date of oral arguments, fails to appear, to submit materials or to obtain a postponement or adjournment. However, an award shall not be made in favor of an appearing 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) Award by master arbitrator.

(1) Form and scope of award.

(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 transmitted to the parties by the designated organization, 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 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) pay to the applicant the amount previously paid by the applicant to reimburse for the filing fee in 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's 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 30 days after proof of claim therefor was received by the insurer and ending with the date of payment of the award, subject to the provisions of section 65.15(h) (3) of this Part (stay of interest).

(2) Award 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 and shall be transmitted to the parties by the designated organization, with a copy to the Insurance Department.

(3) Delivery of award 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 designated organization shall note on such award or transmittal letter thereof the date of mailing and keep a record of same.

(4) Payment of award. Subject to subdivision (i) of this section, 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 arbitration award which was adverse to the insurer, the designated organization shall reimburse the insurer its filing fee paid by the applicant insurer in the arbitration below. The reimbursement shall, in accordance with sections 65.17(b)(5)(xxiv)(a) and 65.18(e)(24)(i) of this Part, be charged to the cost of administering the arbitration forum below.

(2) If the master arbitrator's award reverses in whole an arbitration award which was adverse to the applicant, the designated organization shall bill the insurer the filing fee refunded below pursuant to sections 65.17(b)(5)(xxiv)(a) and 65.18(e)(24)(i) of this Part. Such payments shall reduce the cost of administering the arbitration forum 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 designated organization, subject to consultation with and approval by the superintendent.

(h) Alternative legal remedies. The designated organization or the master arbitrator shall transmit to the superintendent copies of any legal papers served upon the designated organization, or the master arbitrator, relating to any stay or appeal of a master arbitration.

(i) Appeal from master arbitrator's award.

(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's 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 the subject of judicial action or review shall be made prior to the commencement of such action.

(j) Master arbitrator's fee. The master arbitrator shall be compensated in the amount of \$200 for each case. Such fee will be paid by the designated organization. The master arbitrator's fee shall be charged to the cost of administering the master arbitration system.

(k) Limitations on attorney's fees pursuant to section 5106 of the Insurance Law. The following limitations shall apply to the payment by insurers of applicant's attorney's fees for services rendered in a master arbitration to resolve a no-fault dispute:

(1) The minimum attorney's 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 paragraph (c) (1) of this section.

(iii) If an applicant is successful in obtaining a reversal of the arbitration(s) below, wherein no attorney's fee was awarded, the attorney in the arbitration below shall also be entitled to receive a fee, computed in accordance with the provisions of paragraph 65.17(b) (6) or subsection 65.18(f) of this Part, which shall be payable in the manner provided in section 65.17 or 65.18 of this Part.

(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's 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's 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.

(1) Financing.

(1) The cost of administering the master arbitration system over and above the amount of fees paid by applicants and insurers shall be paid annually by insurers to the designated organization upon receipt of a statement therefrom. This cost shall be distributed among insurers in an equitable manner approved by the superintendent. This distribution shall, to the extent practicable, be a function of the degree to which an insurer is a party to arbitration proceedings.

(2) Upon filing of a demand for master arbitration by an applicant, the designated organization shall bill the respondent insurer the sum of \$250, which shall be payable by the insurer within 30 days after billing.

(3) On an annual basis, as of December 31st of each year, the designated organization shall prepare a detailed accounting of the actual costs incurred for the implementation of the master arbitration system and the amount of fees received from applicants and insurers. The accounting will be forwarded to the No-Fault Optional Arbitration Advisory Committee (the committee) and the superintendent on or before April 30th of each year. The committee shall notify the designated organization and the superintendent whether it accepts the designated organization's accounting in whole or in part. In the event the designated organization and the committee cannot resolve any differences that may exist, the dispute will be referred to the superintendent for resolution. The superintendent's decision shall be binding on the designated organization and insurers.

(4) Once the designated organization submits a final accounting that has either been approved by the committee or resolved, in the event of a dispute, by the superintendent, the designated organization shall send to each insurer a bill for the amount due or a refund for the amount credited, based upon the number of master arbitrations to which the insurer was a party.

(m) Oversight. The superintendent shall oversee the designated organization with respect to the administration of the optional arbitration process. Such oversight shall include, but not be limited to, access to all systems, databases, and records related to the optional arbitration process. In addition, the designated organization shall make reports to the superintendent in whatever form the superintendent shall prescribe.

* NB Effective until June 5, 2002

Renumbered 65.18 to be 65.19 on 12/01/99, expired 90 days after filing;
renumbered 65.18 to be 65.19 on 1/20/00, expired 90 days after filing;
renumbered 65.18 to be 65.19 on 4/04/01, expired 90 days after filing;
renumbered 65.18 to be 65.19 on 6/25/01, expired 90 days after filing;
renumbered 65.18 to be 65.19 on 9/18/01, expired 90 days after filing;
renumbered 65.18 to be 65.19 on 12/12/01, expired 90 days after filing;
renumbered 65.18 to be 65.19 on 3/08/02, expired 90 days after filing; amended
65.19 on 12/01/99, expired 90 days after filing; amended 65.19 on 1/20/00,
expired 90 days after filing; amended 65.19 on 4/04/01, expired 90 days after
filing; amended 65.19 on 6/25/01, expired 90 days after filing; amended 65.19
on 9/18/01, expired 90 days after filing; amended 65.19 on 12/12/01, expired
90 days after filing; amended 65.19 on 3/08/02, expired 90 days after filing.