American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Specialty Surgery of Secaucus LLC (Applicant)	AAA Case No.	17-17-1072-1840
	Applicant's File No.	FDNY17-22127
- and -	Insurer's Claim File No.	0421950020101074
	NAIC No.	22063
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Deepak Sohi, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD:**

Injured Person(s) hereinafter referred to as: EIP

1. Hearing(s) held on 08/30/2018
   Declared closed by the arbitrator on 09/03/2018

   Zarah Naqvi from Fass & D'Agostino, P.C. participated in person for the Applicant

   Jaime Orlando from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 4,203.84**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed was amended to $2,608.08 in accordance with the New Jersey Automobile Medical Fee Schedule.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   This arbitration arises out of medical treatment, specifically lumbar epidural steroid injections (LESI) and trigger point injections (TPI), provided to the EIP, a 31-year-old male, who was involved in a motor vehicle accident as a driver on 1/28/2017. Applicant is seeking reimbursement of facility fees for LESI's and TPI's provided to the EIP on date of service 4/26/2017.

Respondent denied reimbursement of the facility fees for the LESI's and TPI's based on the Independent Medical Peer Review conducted by Dr. Jay M. Weiss, MD, dated 5/18/2017.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

MEDICAL NECESSITY

LUMBAR EPIDURAL STEROID INJECTIONS & TRIGGER POINT INJECTIONS - DATE OF SERVICE 4/26/2017

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud. Dists.]). The burden shifts to the Respondent to prove that the services were not medically necessary.

If an insurer asserts that a medical test, treatment, supply or other service was not medically necessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See A.B. Medical Services, PLLC v. Geico Insurance Co., 2 Misc. 3d 26 [App Term, 2nd & 11th Jud. Dists. 2003]; Kings Medical Supply Inc. v. Country Wide Insurance Company, 783 N.Y.S. 2d at 448 & 452; Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc. 3d 128 [App Term, 2nd & 11th Jud. Dists. 2003]).

In support of its denial, the Respondent submitted the Independent Medical Peer Review of Dr. Jay M. Weiss, MD, dated 5/18/2017. It was Dr. Weiss's determination that the standard of care for medical necessity of the repeat bilateral LESI's and TPI's had not been met. To support that determination, Dr. Weiss states," As a matter of fact, the standard of care in the medical community and that specifically outlined by New York State is that, '[e]pidural glucocorticosteroid injection is not effective for lumbar axial pain or non-radicular pain syndrome and they are not recommended for this indication. ESI is not recommended for acute or non-acute back pain in the absence of significant radicular symptoms. ESI is also not recommended as first or second line treatment in individuals with back pain symptoms that predominate over leg pain.' Please see: New York Mid and Low Back Injury Medical Treatment guidelines, New York State Workers' Compensation Board, Third Edition, September 15, 2014, D. 6. b.". Based on the records reviewed, Dr. Weiss continues, "The claimant had neck and back pain radiating to all four extremities though more on the left than on the right. There was no specific radicular distribution of the complaints of pain. Radiculopathy is a lesion of one nerve root as it leaves the spine. This would not give decreased strength and sensation of an entire limb. A cerebrovascular accident or stroke might give weakness and sensory loss in an entire limb but a radiculopathy would not do that".

Dr. Weiss goes on to state, "[F]uthermore, the claimant had previously underwent lumbar epidural injections one week earlier on 4/19/2017. Epidural injections should not be automatically be repeated or performed in a series of three. A second epidural steroid injection is not recommended if following the first injection there has been resolution of the symptoms of the acute radicular pain syndrome, particularly resolution of leg symptoms, or a decrease in symptoms to a tolerable level. If there has not been a response to a first epidural injection, there would be no recommendation for a second epidural injection, a second injection is not recommended. In patients who respond with the pharmacologically-appropriate three to six weeks of temporary partial relief of leg pain, but then who have a worsening of leg pain and function, and who are not (yet) interested in surgical discectomy, a repeat epidural steroid injection is an option. In this case, the criteria for a repeat epidural injection was not met. There was no timely evaluation over one week after the first injection to know what response there was to the previous injection. The time to determine whether an injection should be repeated should not be made prior to the performance of any injections but should be made at a timely re-evaluation after the first injection to know what the response there was. The time to determine whether additional injections should be performed should not be made

when one is in an ambulatory surgery facility (in this case out of state) and in a procedure suite, but rather should be made prior to scheduling the procedure.

There were also no focal lesions that would necessitate lumbar transforaminal epidural injections at three levels on both sides of the spine. Furthermore, trigger point injections were performed, however, there was no report of actual trigger points being present. Trigger point injections and trigger points are defined in the medical literature. These are not merely areas of tenderness and spasm, but but have specific diagnostic criteria. According to Weiss, Silver, Lennard & Weiss, in Easy Injections, 2007, Butterworth-Heinemann/Elsevier, Chapter 7, they note that trigger points are described as discrete, focal, hyperirratible spots that are usually in a taut band of muscle but may be found in ligaments, periosteum tendons and pericapsular areas. Trigger points are called such because they trigger or refer pain into a specific distant area called a reference pain zone. The referred pain from trigger points is generally predictable and these patterns are mapped in trigger point manuals. According to New York State in the Neck Injury Medical Treatment Guidelines, 'trigger point injections are indicated in those patients where well-circumscribed trigger points have been consistently observed, demonstrating a local twitch response, characteristic radiation of pain pattern and local autonomic reaction, such as persistent hyperemia following palpation. Generally, these injections are not necessary unless consistently observed trigger points are not responding to specific, noninvasive, myofascial interventions within approximately a six-week timeframe. Please see: New York State Workers' Compensation Board Neck Injury Medical Treatment Guidelines, June 30, 2010, D.3.c. ii. Based on the records reviewed here, the procedures were not medically necessary". Based on the records reviewed, it is Dr. Weiss' determination that the repeat lumbar transforaminal epidural injections and trigger point injections perfformed date of service 4/26/2017 were not medically necessary.

I find that Dr. Weiss has stated a factual basis and medical rationale for his determination that the LESI's & TPI's were not medically necessary. Dr. Weiss summarizes the generally accepted standard, supports that standard with citations to medical articles, and applies that standard to this particular EIP. I find, that with this peer review report, the Respondent has presented more than sufficient evidence to satisfy its burden with regard to establishing that the LESI's & TPI's herein lack medical necessity. Thus, the

burden has shifted to the Applicant, who bears the ultimate burden of persuasion.

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. [see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed]), Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company, 2008 NY Slip Op 50456U, 18 Misc. 3d 1147 [A], 2008 N.Y. Misc. LEXIS 1121, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co. 13 Misc.3d 131 [A], 824 N.Y.S.2d 759, 2006 NY Slip Op 51871 (U) 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06)].

Applicant did not submit a formal rebuttal to Respondent's peer review report. Instead it relies on an initial evaluation report, dated 2/8/2017, a follow-up evaluation report, dated 4/12/2017, by Dr. Clifton Burt, MD, the treating surgeon, operative reports, and MRI reports of the cervical and lumbar spine, to rebut the findings of the peer review and to support the medical necessity of the LESI's & TPI's.

After reviewing these reports, in light of Dr. Weiss' peer review, noted above, I find that the initial, follow-up, operative, and MRI reports do not properly rebut the findings of Dr. Weiss' peer review. There were no trigger points or specific lesions noted in Dr. Burt's evaluations, without focal evidence of radiculopathy and corresponding imaging findings or any lesion that would necessitate lumbar transforaminal epidural injections, the injections were not indicated. Furthermore, according to Dr. Weiss, the claimant had previously underwent lumbar epidural injections one week earlier on 4/19/2017. Epidural injections should not be automatically be repeated or performed in a series of three. A second epidural steroid injection is not recommended if following the first injection there has been resolution of the symptoms of the acute radicular pain syndrome, particularly resolution of leg symptoms, or a decrease in symptoms to a tolerable level. If there has not been a response to a first epidural injection, there would be no recommendation for a second epdiural injection, a second injection is not recommended. In this case, the criteria for a repeat epidural injection was not met. There was no timely evaluation over one week after the first injection to know what response there was to the previous injection. The time to determine whether an injection should be

repeated should not be made prior to the performance of any injections but should be made at a timely re-evaluation after the first injection to know what the response there was. The time to determine whether additional injections should be performed should not be made when one is in an ambulatory surgery facility (in this case out of state) and in a procedure suite, but rather should be made prior to scheduling the procedure.

Based on the medical records in this case, the injections before me are the second of a series of three injections, the first of which was performed on 4/19/2017. This was only one week before the injection herein was performed, yet, other than the operative report, there is no follow-up exam between the injections by the treating surgeon, in the ECF. However, the New York Mid and Low Back Injury Medical Treatment guidelines, New York State Workers' Compensation Board, Third Edition, September 15, 2014, D. 6. a., states, "Injections should not be repeated if the first injection does not provide: Improvement in function, Temporary and sustained pain relief as measured by accepted pain scales, i.e., 50% pain reduction in Visual Analog Scale and/or Reduction in the use of prescribed analgesic medication, Medical management should be continued or adjusted based upon patient assessment and response. There is no follow-up report from Dr. Burt between 4/19/2017 and 4/26/2017 located in the ECF to determine the efficacy of the first injections and establish the medical necessity of the repeat injections.

After a careful review of the records and consideration of the parties' oral arguments, and comparing the relevant evidence presented by both parties against each other and the above referenced standards, I find the Applicant has not met its burden of persuasion of rebuttal. Therefore, the LESI's & TPI's provided for on date of service 4/26/2017 are hereby denied.

5. Optional imposition of administrative costs on Applicant.
   Applicable for arbitration requests filed on and after March 1, 2002.

   I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**
   - ☐ The policy was not in force on the date of the accident
   - ☐ The applicant was excluded under policy conditions or exclusions

☐
The applicant violated policy conditions, resulting in exclusion from coverage
☐The applicant was not an "eligible injured person"
☐The conditions for MVAIC eligibility were not met
☐The injured person was not a "qualified person" (under the MVAIC)
☐The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
☐The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York
SS :
County of Nassau

I, Deepak Sohi, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/10/2018
(Dated)

Deepak Sohi

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form
Unique Modria Document ID:
7a14527759b3d5545a5a5b597c2d0026

Electronically Signed

Your name: Deepak Sohi
Signed on: 09/10/2018