

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Comfort Choice Chiropractic PC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-19-1140-1388
Applicant's File No.	125.164
Insurer's Claim File No.	0324389870101017
NAIC No.	22063

**ARBITRATION AWARD**

I, Amanda R. Kronin, 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: LV

1. Hearing(s) held on 11/11/2020  
Declared closed by the arbitrator on 11/11/2020

Vincent Ku, Esq from Tsirelman Law Firm PLLC participated by telephone for the Applicant

Rachel Hochhauser, Esq from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, \$ **3,178.42**, was NOT AMENDED at the oral hearing.  
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The Assignor, LV, a 26 year old female was injured as the driver of a motor vehicle involved in an accident on 11/02/18. The Assignor subsequently commenced treatment. She underwent LINT (localized intense neurostimulation therapy) conducted on 3/27/19, and 4/10/19. Respondent denied medical necessity for said procedure citing a Peer Review by Dr.

Kevin Portnoy, dated 5/13/19. The issue before this Arbitrator is: whether the treatment was medically necessary, and if so, what is the proper reimbursable amount.

#### 4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

As a result of the accident, the Assignor sustained injuries to her back, and neck. Applicant seeks no-fault reimbursement for LINT (localized intense neurostimulation therapy) conducted on 3/27/19, and 4/10/19.

In support of its contention that the injections were not medically necessary, Respondent submits the peer review report of Dr. Kevin Portnoy, dated 5/13/19. In that report he reviews two unlisted special service procedures conducted on the EIP on 3/27/19, and 4/10/19. After review of the medical records provided to him, he found no evidence of medical necessity demonstrated for these procedures. He noted that pursuant to guidelines, ultrasound or other imaging studies are not necessary or indicated for the performance of trigger point injections. Trigger points are actually taut bands of tissue that are palpated manually. This can easily be done on a simple physical examination. Furthermore, the subject studies were not recommended in this setting. Dr. Portnoy does not lay a groundwork for the many possible reasons why this treatment could be performed. His report in general, is cursory. In addition, he undermines his own opinion.

Ultimately, Dr. Portnoy's determination of a lack of medical necessity is not rationally based and does not establish any contravention of generally accepted practices. I find his report to be brief and lacking in substance. The peer review report fails to form a nexus between the injury of the patient and the contention that the injections were not medically necessary. Merely setting forth a conclusory statements and citing to medical journals without specifically connecting this information to this patient is factually

insufficient and does not reflect a cogent medical rationale. Therefore, I find that the burden has not shifted to Applicant to establish medical necessity.

Nonetheless, I have reviewed Applicant's Rebuttal by Dr. Marcelo Quiorga. He addressed the LINT (localized intense neurostimulation therapy) conducted on 3/27/19, and 4/10/19. In summary, he points out that the use of the machine would reliably identify the EIP's trigger points and effectively treat the EIP's trigger points through modern technology by way of electrical impedance and neural stimulation respectively. His rebuttal is very thorough and even if the Respondent had shifted the burden, I find that the Applicant would have rebutted it. I therefore find that even if Dr. Curley's report had shifted the burden to Applicant, Applicant has independently established medical necessity for the services at issue.

## **FEE SCHEDULE**

Respondent set forth a fee schedule defense. Respondent may interpose a defense that the claim exceeds the fees permitted by the Workers' Compensation fee schedule. See Abraham v. Country-Wide Ins. Co., 3 Misc. 3d 130A, 787 N.Y.S.2d 678, 2004 Slip Op 50388U (App. Tm. 2<sup>nd</sup> Dept 2004). The Respondent must demonstrate by competent evidentiary proof that applicant's claims were in excess of the appropriate fee schedules; otherwise respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. See Continental Medical, P.C., v. Travelers Indemnity Co., 819 N.Y.S.2d 847 (App. Term 1st Dep't 2006).

This arbitration involves two separate bills submitted by the Applicant for the subject services on 3/27/19, and 4/10/19. The Applicant billed \$1426.25 per session. Respondent maintains that the amount should be reduced to \$208.23 per session. In support, Respondent submits the IHC report of Susan Montana, COC, CPMA, CHTS-TR.

The Applicant in support of its billed amount of \$1426.25 per session relies upon the report of Frank Keane, CPC dated 8/18/20.

Mr. Keane states: I disagree with Ms. Mallory's downcode as, again, it does not properly take into account the service being performed here. Ms. Mallory's downcode is to that of a simple Physical Therapy modality. A Physical Therapy modality, Electrical Stimulation, is not being performed here. Instead, as the medical records show, localized and much more intense higher frequency stimulation is being provided. The LINT portion of the service combines very high frequency. Transcutaneous Electrical Neurostimulation (TENS) with Myofascial Release to the specific Trigger Points causing pain. I believe that reimbursement for the LINT portion of the service should be made at the rate of 2-units of CPT code 64550 - Application of a surface (transcutaneous) neurostimulator. This service better equates to the high-frequency stimulation and release being applied. As shown above, the therapy aims to produce more than just to block or change perceptions of pain. CPT code 64550 has a relative value of .32 units x Surgery conversion factor of \$229.01 = \$73.29 per unit- a total of \$146.58 for this portion of the service provided. Again, as set forth above, CPT code 64550 is not the service actually performed here, it is simply the most closely related procedure in order to determine a relative value for the By-Report code billed. Electrical Stimulation is generally billed in 15 minute time increments; as 30 minutes of treatment were performed here, 2-units of reimbursement of the above code should be reimbursed. Further, for the reasons set forth above, no Multiple Surgery reduction (Surgery Ground Rule 5) would be applicable here.

Certified Professional Coder Montana concluded in her IHC report that for CPT code 76942, the RVU is 4.97, (1 unit) and conversion factor is Radiology 36.20 for a \$179.91 fee. For CPT code 97032, the RVU is 2.45 (2 units) and conversion factor is Physical Medicine 5.78 for a \$28.32 fee. The fee then for each date of service is \$208.23 (\$179.91 plus \$28.32)." Ms. Montana's analysis provided for the amount allowable of \$208.23.

Further, the Respondent relies upon the certified coding report of Carolyn Mallory, CPC. This same coding report and issue was extensively reviewed and analyzed by Arbitrator Jeffrey Silber, AAA case number 17 - 19 - 1118 - 0354 following a hearing conducted on August 5, 2020. In that award he sustained the Respondent's reduction and stated as follows:

Ms. Mallory in her coder affidavit notes that both CPT 95999 and 99199 are both unlisted CPT codes found in the Medicine section of the

chiropractic and medical fee schedule. General Ground Rule #2 - Procedures Listed Without Specified Relative Value Units. By report (BR) items: "BR" in the relative value column represents services that are too variable in the nature of their performance to permit assignment of relative value units. Fees for such procedures need to be justified "by report." Pertinent information concerning the nature, extent, and need for the procedure or service, the time, the skill, and the equipment necessary, etc. is to be furnished. Sufficient information shall be submitted to permit a sound evaluation. It must be emphasized that reviews are based on records. For any procedure where the relative value unit is listed in the schedule as "BR", the physician shall establish a relative value unit consistent in relativity with other relative value units shown in the schedule. There was nothing noted in the medical records as to how the provider determined the relative value or dollar amount for the procedure performed.

Ms. Mallory then broke down the two procedures performed.

LINT - Localized Intense Neurostimulation Therapy

- Provider records indicate they are using the Nervomatrix device.
- This device was submitted to the FDA (Food and Drug Administration) for approval.
- The FDA website (Food and Drug Administration) indicates that this device is similar the NeMa-st which is classified as Stimulator, nerve, transcutaneous for pain relief.
- I was unable to locate anything on the FDA website regarding the trade name Soleve. I have attached information regarding the NeMa-st which is found on the FDA website and is from Nervomatrix. Based on the information on the Nervomatrix website the NeMa-st and the Soleve do the same thing.

Ms. Mallory concluded: 97032 is Application of modality to 1 or more areas: electrical stimulation manual, each 15 minutes. The relative value of CPT 97032 is 2.45. The notes indicate a total of 30 minutes which equals 2 units of 97032.  $2.45 \times 5.78 = \$14.16 \times 2 = \$28.32$  99199 - \$41.40.

TPH

95999 - TPII - (Trigger point impedance imaging) They are looking for the trigger points. When manually looking for trigger points they can be palpated and when giving injections ultrasound guidance can be used. This machine is locating the trigger points which are similar in relative value to 76942 which has a relative value of 4.97. Therefore, for the TPII -  $36.20 \times 4.97 = \$179.91$ . The total amount is therefore \$208.23.

Mr. Keane opines: After a review of medical records at issue, along with the Fee Schedule Audits of Ms. Mallory and Ms. Villalobos, the Trigger Point Impedance Imaging (TPII) Report and Localized Intense Neurostimulation Therapy (LINT) should be billed at the reasonable and customary amount in the geographical area where it was performed. In establishing a RVU consistent with other services found with specific values in the controlling NYS Workers' Compensation Fee Schedule, as shown above, the diagnostic portion of the service (TPII) is reimbursable at the rate of \$1,279.67; the therapeutic portion of the service provided (LINT) is reimbursable at the rate of \$146.58 for each date of service. However, Mr. Keane never reviewed the IHC report of Ms. Montana. I find his affidavit less credible because he hasn't addressed the conclusions and analysis set forth by Ms. Montana.

I therefore find that the Applicant has not established an appropriate fee for these procedures, and I rely upon the IHC report submitted by the Respondent. I adopt the well reasoned decision and analysis utilized by Arbitrator Silber, and sustain the reduction in payment to the Applicant in the amount of \$208.23 per session.

Accordingly, after a careful review of the records and consideration of the parties' oral arguments, I find for the Applicant. Reimbursement as requested is due and owing herein. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Comfort Choice Chiropractic PC	04/10/19 - 04/10/19	\$1,589.21	Awarded: \$208.23
	Comfort Choice Chiropractic PC	03/27/19 - 03/27/19	\$1,589.21	Awarded: \$208.23
Total			\$3,178.42	Awarded: \$416.46

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/28/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two

percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e), subject to a maximum fee of \$1,360." 11 NYCRR 65-4.6(d)

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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

State of New York

SS :

County of Suffolk

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

11/16/2020  
(Dated)

Amanda R. Kronin

**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  
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### **Electronically Signed**

Your name: Amanda R. Kronin  
Signed on: 11/16/2020