American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

LR Medical PLLC (Applicant)	AAA Case No.	17-20-1159-9445
	Applicant's File No.	none
- and -	Insurer's Claim File No.	104867403
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Hersh Jakubowitz, 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 11/19/2020
   Declared closed by the arbitrator on 11/19/2020

   John Faris from Law Offices of Eitan Dagan participated by telephone for the Applicant

   Erisa Ahmedi from American Transit Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 881.63**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The Parties stipulated that Applicant had met its prima facie burden of proof, that Respondent's denials were interposed in a timely fashion and the claim amount adheres to the fee schedule.

3. Summary of Issues in Dispute

   Was the trigger point injections administered to EIP and performed by the Applicant NOT medically necessary based on the analysis of Respondent's designated peer?

4. Findings, Conclusions, and Basis Therefor

This award is predicated upon both a review of the respective submissions of the parties contained within the electronic case file maintained by the American Arbitration Association and the oral argument of the parties.

The dispute arises when EIP a 60-year-old female was the rear seat passenger involved in a motor vehicle accident on January 8, 2019. As a result of the impact, the EIP sustained multiple injuries including injuries to the lower back. Due to complaints of pain, the EIP then started on a course of physical therapy, medications and chiropractic treatment. She also had an MRI study of the lumbar spine. MRI study of the lumbar spine performed on February 1, 2019 revealed disc herniation at the L3-L4 and L5-S1 levels and bulging disc at the L4-L5 level. Due to persistent complaints of pain, EIP presented to Leon Reyfman, M.D. for an initial pain management consultation on March 6, 2019. At that time, she complained of 8-10/10 lower back pain radiating to the buttocks and right leg associated with numbness/tingling sensation in the feet/toes. The pain was described as aching, sharp, shooting and burning in nature. The pain exacerbated by mechanical type activities including standing, sitting, bending forward, lifting, standing and walking. The EIP's ability to get on/off the examination table was moderately impaired. The EIP also reported fatigue, impaired work tolerance, difficulty in sleeping, squatting, concentrating and performing activities of daily living. Examination of the lumbar spine revealed tenderness and muscle spasm upon palpation, limited range of motion, pain on flexion and positive Straight Leg Raising test. Neurological examination revealed decreased sensation to pinprick and light touch at the right LS and S1 dermatomes, decreased muscle strength and deep tendon reflexes. Based on complaints, findings upon evaluation and review of the MRI study, the diagnoses were other intervertebral disc displacement lumbar and lumbosacral region and muscle spasm of back. Therefore, the EIP was recommended lumbar epidural steroid and trigger point injections. On March 20, 2019 Applicant performed a trigger point injection at L5-S I level under fluoroscopic guidance and interspinous ligaments of L4-5 and L5-Sl space; posterior sacroiliac ligament and erector spinae, multifidus and latissimus dorsi muscles. The claim if for no-fault benefits for the said trigger point injection.

The Applicant has established its prima facie case by proof that the prescribed statutory billing forms had been received and that payment of no-fault benefits was not forthcoming. (See, New York & Presbyt. Hosp. v. Countrywide Ins. Co., 44 A.D.3d 729 [N.Y. App. Div. 2d Dep't 2007]). Proof of the receipt of the Applicant's billing is implicit in the timely denial issued by the Respondent. The Respondent's obligation is to now demonstrate the validity of its denial

The Respondent's denial raised the asserted absence of medical necessity based on the analysis of its designated peer, Dr. Vijay Sidhwani, MD. The corresponding report dated June 6, 2019 has been submitted in support of the Respondent's position.

In considering the issue presented, I note that the Applicant is not required to show that the contents of the statutory no-fault forms themselves are accurate or that the medical services documented therein were actually rendered or necessary. Stated another way, the Applicant is not required to establish the merits of the claim to meet its prima facie burden. (Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co., 114 A.D.3d 33, 46, aff'd 25 NY3d 498)

On the contrary, "[m]edical necessity is presumed upon the timely submission of a no-fault claim (see All County Open MRI & Diagn. Radiology P.C. v. Travelers Ins. Co ., 11 Misc. 3d 131[A], 815 N.Y.S.2d 493, 2006 NY Slip Op 50318[U] [App Term, 9th & 10th Jud Dists 2006]). Thus, ordinarily it falls to the Respondent to establish that the billed-for services were not medically necessary." (Park Slope Med. & Surgical Supply, Inc. v. Progressive Ins. Co., 34 Misc. 3d 154[A] [N.Y. App. Term 2012] [concurring opinion, Golia, J.]; see, also, Kings Med. Supply Inc. v. Country-Wide Ins. Co., 5 Misc. 3d 767, 771 [N.Y. Civ. Ct. 2004 ["It is by now firmly established that the burden is on the insurer to prove that the medical services or supplies in question were medically unnecessary {citation omitted}."])

The Respondent, to establish the validity of its denial on a prima facie level and put the Applicant to its proof, must, as a minimum, demonstrate both a factual predicate and medical rationale for the asserted absence of medical justification for the specific service provided to the EIP, and must premise its contention upon uncontroverted evidence of generally accepted medical standards of care. (See, Nir v. Allstate Ins. Co., 7 Misc. 3d 544, 547 [N.Y. Civ. Ct. 2005])

Thus, the focus falls squarely on the Sidhwani report.

Critical of the challenged injections and associated services, citing supportive medical literature, and, based on his analysis of the EIP's medical records, opined that the clinical findings and reported symptoms did not rise to a level sufficient to justify the trigger point injection performed on March 20, 2019.

In pertinent part, Dr. Sidhwani criticizing the epidural steroid injection with fluoroscopic guidance performed on March 20, 2019, notes: " that the trigger point injections were not medically necessary . There is no clear-cut evidence that these types of injections are effective in pain relief compared to placebo. For instance, according to one review article, *"**There is a lack of firm evidence for the use of trigger point injections [16]. A randomized study of trigger point injection in patients with low back pain found that outcomes were equivalent for patients who were injected with local anesthetic or with saline, or who were needled without injection, or sprayed with a vapocoolant, suggesting that any type of counter stimulation had some effect.*** *{Treatment of Neck Pain, UpToDate, July 31, 2014).* In another review it is noted that, ' ***systematic review*** *found no clear differences between local or trigger point injections with a local anesthetic,* with or without a corticosteroid, and control interventions (saline or dry needle injections, or ethyl chloride plus acupressure) for short-term (seven days to two months) pain relief in three trials of patients with subacute or chronic low back pain {34}. All trials had methodological shortcomings

and evaluated heterogeneous injection methods. One trial evaluated an injection over the iliac crest [35], one evaluated injections over the iliolumbar ligament [36], and one evaluated trigger point injections {37}. The limited benefit observed in heterogeneous, low quality studies does not support their widespread use." *{Subacute and* chronic low back pain: Nonsurgical interventional treatment, UpToDate, May 2014).

Furthermore, such injections are only recommended for chronic pain conditions however, the claimant was being treated for an acute soft tissue injury and had not received an adequate course of treatment, which guidelines suggest should be provided for a period of at least three months.

In fact, according to *The New York Medical Treatment Guidelines Third Edition, 09/ 15/ 2014* regarding trigger point injections **"Trigger point injections are not recommended for treatment of acute back pain."**

Where, as here, a peer review provides a factual basis and medical rationale for the opinions stated, the burden shifts to the Applicant to refute the Respondent's showing with sufficient contrary proof which, if it is to prevail, tends to establish the medical necessity for the service provided. (See, Pan Chiropractic, P.C. v. Mercury Ins. Co., 24 Misc. 3d 136[A] [N.Y. App. Term 2009]; A.M. Med. Servs., P.C. v. Deerbrook Ins. Co., 18 Misc. 3d 1139[A] [N.Y. Civ. Ct. 2008])

In response to the peer review, the Applicant submits a rebuttal by Dr. Reyfman. to rebut the Peer's analysis. The rebuttal states as reasons for the trigger point injection " when the EIP was presented to Dr. Reyfman on March 20, 2019 she complained of aching, sharp, shooting and burning lower back pain radiating to the buttocks and right leg associated with numbness/tingling sensation in the feet/toes along with tenderness and muscle spasm upon palpation, limited range of motion, pain on flexion, positive Straight Leg Raising test, decreased sensation to pinprick and light touch at the right L5 and S1 dermatomes, decreased muscle strength and deep tendon reflexes. Therefore, considering the severity of her condition and numerous positive findings, it was decided to perform trigger point injection.

Trigger point injections (TP) is currently used to treat a wide variety of pain syndromes and other painful conditions. In this case, TP was performed for the treatment of muscle spasm of back.

Also, better results can be obtained with TP injections than only a home exercise program and oral medications in patients with radiculopathy and TPs in the gluteal region. (Efficacy of Trigger Point Injections in Patients with Lumbar Disc Herniation without Indication for Surgery.)

Moreover, there is ample evidence to suggest that TPI can be effective as a treatment of chronic pain and bodies such as the American College of Occupational and Environmental Medicine recommend the use of Trigger point injections using local anesthetic as an option for treating trigger points that are not resolving. (American College of Occupational and Environmental Medicine. Chronic pain. In: Occupational

medicine practice guidelines: evaluation and management of common health problems and functional recovery in workers. Elk Grove Village (IL): American College of Occupational and Environmental Medicine (ACOEM); 2008. p. 73- 502.)

TPI is generally considered a medical necessity in several scenarios including where:

- Trigger points have been identified by physical examination and palpation; and
- Symptoms have persisted for a significant period of time; and
- Medical management therapies such as bed rest, exercises, physical therapy, non- steroidal anti-inflammatory medications (unless contraindicated) and muscle relaxants have failed to control pain.

(DAVID J. ALVAREZ, D.O., and PAMELA G. ROCKWELL, D.O., Trigger Points: Diagnosis and Management, University of Michigan Medical School, Ann Arbor, Michigan., Am Fam Physician).

Moreover, there are no specific guidelines delineating the absolute structured path for treatment to be universally prescribed to all patients. Accordingly, great deference should be given to the treating provider charged with the responsibility to examine, diagnose and treat a patient who presents with symptoms and positive clinical findings. It is well settled that it is up to the clinician to decide, based on the circumstances of the injury and the individual patient's exam findings, whether the trigger point injection is appropriate. A guideline is not absolute. It is intended to help the clinician make decisions regarding care based on all of the information presented to her/him for each patient. Each patient must be examined as an individual and the decisions regarding his treatment shall be taken based on the clinical presentations at the time of examination.

Of note, the Peer reviewer cites to the New York State Worker's Compensation Board Medical Treatment Guidelines. These guidelines are not a peer-reviewed authority and refer to Worker Compensation claims as compared to No-Fault claims. These aforementioned guidelines should not be considered as authority to support the denial of the services at issue.

Analysis

Medical Necessity

Dr. Sidhwani relies upon The New York Injury Medical Treatment Guidelines, issued by the NYS Workers' Compensation Board. However, it should be noted, according to the Department of Financial Services opinion issued on March 7, 2003, 2003 Ops Ins Dept. 03-03-26, [http://www.dfs.ny.gov/insurance/ogco2003/rg030326.htm], a deviation from the Workers' Compensation Treatment Guidelines does not establish a deviation from generally accepted medical practice. The opinion established that, "although §5108(b) provides that the Superintendent coordinate No-Fault and

Workers' Compensation law as to the No-Fault fee schedules it does not bind the Department as regards the methodology behind No-Fault related health service billings…the workers' compensation statute has implications for cost control that are appropriate for workers' compensation insurance, but are not appropriate or applicable under No-Fault insurance."

Upon consideration of the arguments of counsel and after a thorough review of all submissions I find that Applicant has submitted sufficient evidence to meet its burden of demonstrating that the services in issue were medically necessary. Respondent sets forth a factual basis and a medical rationale for denying the claim, but the Applicant's rebuttal and medical records indicate a different conclusion. After carefully weighing the evidence submitted by the parties, I find that Applicant has submitted sufficient evidence to satisfy its burden of refuting the findings of the peer review and demonstrating the medical necessity of the disputed the trigger point injection with epidurography performed on March 20, 2019.

Applicant is awarded its claim.

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
	LR Medical PLLC	**03/20/19 - 03/20/19**	**$881.63**	**Awarded: $881.63**
Total			**$881.63**	**Awarded: $881.63**

B. The insurer shall also compute and pay the applicant interest set forth below. 03/17/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based on the submission of a timely denial, interest shall be paid from the above date, until the date that payment is made at a rate of 2% per month.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney fee, in accordance with newly promulgated 11 NYCRR 65-4(d). After calculating the sum total of the first party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of the sum total, subject to no minimum and a maximum of $1,360.00.

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 Nassau

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

11/21/2020
(Dated)

Hersh Jakubowitz

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:
2dc30ac76bab91cfd9e07c41586bace5

Electronically Signed

Your name: Hersh Jakubowitz
Signed on: 11/21/2020