American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bergenfield Surgical Center (Applicant)	AAA Case No.	17-19-1121-6464
	Applicant's File No.	00034392
- and -	Insurer's Claim File No.	0085628490101140
	NAIC No.	35882
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Lucille S. DiGirolomo, 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: Assignor

1. Hearing(s) held on 09/21/2020, 11/23/2020
   Declared closed by the arbitrator on 11/23/2020

   Sasha Hochman, Esq. from the Law Office of Drachman Katz, LLP participated by telephone for the Applicant

   Cassandra Sticco, Esq. from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,139.58**, 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

   In dispute is Applicant's billing in the amount of $2,139.58 as a facility fee incurred for the performance of a cervical spine epidural and trigger point injections on October 31, 2018 as the result of a motor vehicle accident that occurred on July 12, 2018

   Whether Respondent's denial based on a peer review report by Gary Florio, M.D. can be sustained.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center as of the date of the hearing in this matter and have considered all pertinent documents which were uploaded to the ADR in a timely manner for the purpose of rendering this award. Any documents submitted after the time allotted by the Regulations were not reviewed and the parties did not make any additional submissions on the hearing date.

Assignor was the driver of a motor vehicle involved in an accident on July 12, 2018.

Assignor came under the care of A. Shusterman, D.O. on July 18, 2018 with complaints of low back pain mainly on the right side of the lumbosacral area. The examination revealed decreased ranges of motion in the lumbar spine with midline tenderness and muscle spasm. Trigger points were noted as was a positive Straight Leg Raise test. As a result of this examination, the Assignor was started on a course of physical therapy.

Assignor was examined on July 26, 2018 at Greater Health Through Chiropractic P.C. with complaints of neck, mid back and low back pain. The examination revealed decreased ranges of motion in the cervical spine and lumbar spine with muscle spasm and tenderness. Cervical Distraction and Straight Leg Raise testing was positive. As a result of this examination, Assignor was started on a course of chiropractic care.

Assignor was examined a Citimed on August 13, 2018 with complaints of pain in the cervical spine, lumbar spine and right shoulder. The examination revealed decreased ranges of motion in the cervical spine, lumbar spine and right shoulder with positive Straight Leg Raise testing.

On October 4, 2018, Assignor came under the care of Jonathan Simhaee, M.D. of Brooklyn Premier Orthopedic Group with complaints of neck pain radiating into her right upper extremity into her and with cramping in the right hand and fingers daily and low back pain radiating down her right lower extremity to the top of the thigh. The examination revealed spasm and tenderness over the cervical and lumbar paravertebral musculature bilaterally with positive Spurling, Stretch Root, Slump and Straight Leg Raise testing and positive facet loading bilaterally. On this date, it was determined that physical therapy and chiropractic care would continue, a lumbar spine MRI was ordered and the risks, benefits and alternatives of a cervical spine epidural injection were discussed.

Assignor underwent a cervical epidural under fluoroscopic guidance, an epidurogram and trigger point injections on October 10, 2018.

Assignor was re-evaluated by Dr. Simhaee on October 18, 2018. She reported a fifty percent pain relief for one week after the cervical spine epidural but the pain returned. She complained of neck pain into the shoulders and right arm with low back pain into the L5-S1 distribution with numbness and tingling. The examination revealed impaired sensation to light touch throughout the upper and lower extremities with spasm and tenderness over the cervical and lumbar paravertebral musculature bilaterally. Ranges of

motion were decreased in the cervical spine and lumbar spine with positive Spurling, Stretch Root, Faber's Gaenslen's Maneuver, Slump and Straight Leg Raise testing and positive facet loading bilaterally. After this examination, it was determined the Assignor would undergo a repeat cervical epidural and an L5-S1 epidural injection.

Assignor underwent the cervical epidural injection under fluoroscopic guidance, an epidurogram and trigger point injections on October 31, 2018. Applicant billed $2,139.58 as a facility fee for the procedure. Respondent timely denied this billing based on a peer review report by Gary Florio, M.D. dated December 20, 2018.

Dr. Florio stated the "records do establish these services as being used in a manner outside the accepted clinical standard of care in practice of physical medicine and rehabilitation for treatment and management of the injuries and conditions noted to be present in this claimant". Dr. Florio cites to the New York State Workers' Compensation Board, New York Neck Medical Treatment Guidelines advising that cervical epidural steroid injections are useful in patients with symptoms of cervical radicular pain syndromes but are not effective for cervical axial pain or non-radicular pain syndromes and they are not recommended for this indication. He stated the record presented does not include any "specific subjective complaints or objective physical examination findings consistent with or suggestive of cervical radiculopathy or cervical radicular pain syndrome". He points to Dr. Shusterman's examination of the Assignor which did not note any complaints of cervical pain. He then noted the August 13, 2018 Citimed examination revealed normal muscle strength, sensation and reflexes throughout the upper extremities. He found this to be inconsistent with cervical radiculopathy. Dr. Florio also found the trigger points to be medically unnecessary advising the Assignor was not noted to have any cervical region trigger points. He also noted that it is not "clinically advisable" to perform concurrent injections "to the extent that it dilutes any potential diagnostic value that may be gained from a properly performed singular type of cervical injection".

I note Dr. Florio reviewed more than the two reports he discussed in his report. He reviewed an upper EMG/NCV report dated October 17, 2018 which revealed bilateral C5-C6 radiculopathies yet he insisted there was no evidence of radiculopathy in the record. Clearly this was not the case. In addition, Dr. Florio did not discuss the examination reports which led to the determination that the epidural was necessary nor did he discuss the cervical spine MRI findings or any of the other reports which set forth continued positive examination findings and explain why they should be disregarded when determining the need for the procedure. He never even mentioned that this was a second cervical epidural or the fact that the Assignor had 50% relief for one week after the first one. As a result, I am not persuaded by Dr. Florio's peer review report.

Respondent's counsel argued that, if the Applicant prevailed, it was not entitled to the amount billed as this is a New York State resident receiving treatment in New Jersey and, therefore, the Applicant is limited by changes in 11 NYCRR 68.6. Based on this argument, she concluded the Applicant would be entitled to no more than $94.77.

11 NYCRR 68.6 was amended by the Superintendent of Financial Services on September 22, 2017, to take effect January 23, 2018. This section applies to health services performed outside the State on New York and provides, in relevant part:

> …if a professional health service reimbursable under Insurance Law section 5102(a)(1) is performed outside this State with respect to an eligible injured person that is a resident of this State, the amount that the insurer shall reimburse for the service shall be the lowest of:
>
> (1) the amount of the fee set forth in the region of this State that has the highest applicable amount in the fee schedule for that service;
>
> (2) the amount charged by the provider; and
>
> (3) the prevailing fee in the geographic location of the provider.

Applicant billed $1,012.32 for CPT code 62321, $554.74 for CPT code 20552 with modifier 59 and $572.52 for CPT code 72275 with modifier 59 TC. Respondent's counsel notes that CPT code 62321 is not contained in the New Jersey Fee Schedule. Under N.J.A.C. 11:3-29.5(a) if no fee is listed in the ASC facility fee column for a specific code then that code is not reimbursable if performed in an ASC. Based on this section of the New Jersey Fee Schedule, Respondent's counsel argues only CPT code 20552 is reimbursable and, according to the New Jersey Fee Schedule , the amount allowed is $94.77. CPT code 72275 has an N1 listed which indicates it is an ASC packaged procedure with no separate reimbursement allowed. Respondent further relies upon New Jersey Manufacturers Ins. Co. v. Specialty Surgical Center a/s/o C.F. and Surgicare Surgical Assocs. of Fair Lawn a/s/o M.C., A-0319-17T1, A-0319-17T1 (Jan. 29, 2019), wherein the New Jersey Appellate Division opined that "the PIP medical fee schedule does not provide for payment to an ambulatory surgical center (ASC) for procedures not listed as reimbursable when performed at an ASC."

Applicant's counsel argued that CPT code 62321 is a relatively new code that was adopted by the American Medical Association to replace CPT code 62310. Pursuant to N.J.A.C. 11:3-29.4 (e) a provider is always required to bill the actual and correct code found in the most recent version of the AMA's current procedural terminology. Applicant's counsel further argued that pursuant to this section of the Fee Schedule, Code 62321 should be cross walked to Code 62310 as they represent similar services. Applicant submits an award rendered by Arbitrator Stathopoulos in AAA case number 17-19-1121-698 wherein he found for the Applicant and allowed reimbursement for CPT code 62321 in the amount Applicant billed. In doing so Arbitrator Stathopoulos stated:

> Although, in the past I have followed a strict interpretation of the reasoning in the New Jersey Manufacturers case, I find an exception is warranted herein. In this instance, CPT code 62321 is a relatively new code that went into effect on 1/1/17, as a CPT code that the AMA has

> designated to replace CPT code 62310. CPT code 62310 is a code that is still listed in the New Jersey fee schedule and the New Jersey fee schedule has not been amended to reflect the change in the AMA designated fee codes. It should be noted that services provided in CPT code 62310, are similar to the services provided in CPT code 62321. As such, I find CPT code 62321 is a code that can be "cross walked" (replaced with a code for a comparable service) with the outdated AMA CPT code 62310 under the New Jersey ASC fee schedule. It would be fundamentally unfair to penalize a provider for a service that was indisputably provided and billed correctly pursuant to the current AMA fee codes, but as a result of an outdated fee schedule is not reimbursable. This "cross walk" rationale was further elucidated in multiple AAA decisions which I find are instructive. See, AAA Case Numbers 171810966679 (Arb. Toksoy), 171911376728 (Arb. Gyimesi), 171911296216 (Arb. Benziger), 171911264727 (Arb. Saxe).

In AAA case number 99-18-1103-7037 Master Arbitrator Trestman remanded a matter down to the lower arbitrator who did not allow reimbursement for CPT code 62321 stating:

> Applicant billed for cervical epidural injections under CPT code 62321 which apparently was the AMA replacement code for CPT code 62310 as of 1/1/17; CPT code 62310 is, in fact, included in the NJ Fee schedule and lists the corresponding fees reimbursable to the physicians and the ASC's. Notably, the NJ fee schedule has not been amended since the AMA designated code change. Per NJAC 11:3-29.4[e], when a CPT code for the service performed has been changed since the latest published fee schedule, the provider is required to bill the actual and correct code found in the most recent version of the AMA's coding. The NJ appellate court case is not on point as it involved a CPT code 63030 which was eliminated from the NJ fee schedule for both doctors and ASC's and code 63030 never provided for ASC reimbursement. In the instant case, CPT code 62310 included ASC reimbursement and was not eliminated from the NJ fee schedule; the code was replaced with code 62321 by the AMA.

Respondent requested an opportunity to upload awards and cases it wished to rely upon in its defense. I allowed Respondent this opportunity and I have reviewed those awards. However, I concur with the opinion expressed in the above two matters and find that CPT code 62321 is a relatively new code and was the correct code to be used for the services rendered, as per the AMA 2017 CPT code updates. Applicant should not be penalized for using the correct code as required by N.J.A.C. 11:3-29.4 (e) when the New Jersey Fee Schedule has not updated its CPT codes.

Based on the foregoing, Applicant is awarded $1,012.32 for CPT code 62321, $94.77 for CPT code 20552 and nothing for CPT code 72275 as no separate reimbursement is allowed under the New Jersey Fee Schedule for this code.

Accordingly, Applicant is awarded $1,107.09 in full satisfaction of this claim.

I note, at the hearing, Respondent's counsel advised that, as of the day of the hearing, $21,545.55 remained on the policy of insurance. This award, as well as other awards I have rendered regarding this Assignor, is well within what remains on the policy.

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**
	Bergenfield Surgical Center	**10/31/18 - 10/31/18**	**$2,139.58**	**Awarded: $1,107.09**
Total			**$2,139.58**	**Awarded: $1,107.09**

B. The insurer shall also compute and pay the applicant interest set forth below. 03/18/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall compute interest and pay the Applicant the amount of interest computed from the initiation date as indicated above at the rate of 2% per month, simple, not compounded, calculated on a pro rata basis using a thirty day month, and ending with the date of payment of the award.

C. Attorney's Fees

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

The Respondent shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d) of 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon subject to a maximum fee 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 Queens

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

12/01/2020
(Dated)

Lucille S. DiGirolomo

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:
7a2e56f515c6604ed218761f76956092

Electronically Signed

Your name: Lucille S. DiGirolomo
Signed on: 12/01/2020