

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Accelerated Surgical Center of North Jersey (Applicant)	AAA Case No.	17-20-1157-1180
- and -	Applicant's File No.	237739
	Insurer's Claim File No.	NF-19104901
Global Liberty Insurance Company of New York (Respondent)	NAIC No.	11092

**ARBITRATION AWARD**

I, Kent Benziger, 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: A.T.

1. Hearing(s) held on 02/12/2021  
Declared closed by the arbitrator on 02/12/2021

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated by telephone for the Applicant

Roman Kravchenko, Esq. from Law Office of Jason Tenenbaum, PC participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,136.72**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant has stipulated to amend the amount in dispute to \$2,279.21 pursuant to fee schedule with \$1,213.07 for procedures on November 13, 2019 and \$1,066.14 for the procedures performed on December 11, 2019.

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

3. Summary of Issues in Dispute

On September 19, 2019, the Assignor/Eligible Injured Party, a 51-year-old female, was, by history involved in a motor vehicle accident. In dispute are the facility fees for two

dates of service. On November 13, 2019, Dr. Sangavaram performed a cervical transforaminal steroid injection and trigger point. On December 11, 2019, Dr. Sangavaram performed causal epidural steroid injections at the coccyx, epidurography and trigger point injections. The treatment was denied on the peer reviews of Dr. Povzhitkov. However, a peer review addressing the December 11, 2019 date of service has not been exchanged. Dr. Sangavaram has submitted a rebuttal to the peer review for the November 13, 2019 date of service.

This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

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

On September 19, 2019, the Assignor/Eligible Injured Party, a 51-year-old female, was, by history involved in a motor vehicle accident. The Assignor reportedly was not evaluated at the emergency room on the day of the accident. On September 25, 2019, the Assignor was evaluated at St. Luke's Hospital. She subsequently came under the care of Dr. Richard Murphy, D.C. for neck and lower back pain. The Assignor also received physical therapy treatment at Dassa Orthopedic Medical Services.

On October 3, 2019, the Assignor was evaluated by Dr. Sangavaram for complaints of severe intermittent neck pain radiating bilaterally to the shoulders, upper arms and hands and fingers associated with numbness as well as lower back pain radiating to the right knee to the feet with numbness bilaterally in the legs. On examination, the Assignor had decreased sensation in C5-C7 dermatomes and C3-L5 dermatomes as well as decreased muscle strength. Range of motion was decreased in the cervical and lumbar spine and trigger points and spasm were noted. Positive orthopedic signs included cervical compression and straight leg raising. The assessment included cervicogenic, cervical, and lumbar radiculopathy. On October 21, 2019, a cervical MRI was performed and interpreted as revealing herniations at C3-4 and C5-6 effacing the subarachnoid space and multiple disc bulges. A lumbar MRI performed the same day revealed multi-level interspace narrowing and dehydration, multiple bulges and a L4-5 central disc herniation with bilateral neural foraminal narrowing, lateral recess stenosis and bilateral facet hypertrophy. Continued positive findings were noted on October 31, 2019.

DOS: 11/13/2019. On this date, Dr. Sangavaram performed a cervical transforaminal steroid injection for a pre and postoperative diagnosis of cervical disc displacement,

cervical radiculopathy and myalgia. On the same day, Dr. Sangavaram also performed trigger point injections B/l lumbar paraspinal muscles.

The November 13, 2019, date of treatment was denied based on the peer review of Dr. Igor Povzhitkov. From his review of the medical records, he found no necessity for either the cervical transforaminal steroid injections or the trigger point injections. From his review of the medical records, Dr. Povzhitkov noted the following:

Based on medical records by Dr. G. Dassa, Dr. P. Brinson, Dr. L. Karlin, there was not any clinical evidence of cervical radiculopathy, which would confirmed (including negative EMG/NCV test) any degree of medical certainty. No radicular pain complaints, persistent muscle spasms, sensory or motor deficit/loss in distribution of upper extremities dermatomes or decreased DTR's documented by the provider justifying 2 rendered CESI.

He then cited a Statement on Anesthetic Care During Interventional Pain Procedures that anesthesia care other than local anesthesia is not required for epidurals or trigger point injections due to the risk especially for cervical procedures Dr. Povzhitkov cited ACOEM Guidelines that lumbar epidural injections are reserved for clinically significant lumbar radiculopathy which he found was not present. He noted the claimant was morbidly obese and the imaging studies were highly indicative of pre-existing degenerative cervical and lumbar pathology. He recommended against reimbursement for the treatment in dispute as well as other treatment not before this arbitrator on November 13, 2019.

Through an evaluation on November 19, 2019, Dr. Karlin performed an evaluation in which she noted reduced range of motion. For the cervical spine, the Spurling's and Shoulder Depression tests were positive indicating nerve irritation or compression on the nerve roots or possible foraminal encroachment. The distraction test was positive for cervical neuropathy. In the lumbar spine, straight leg raising was positive bilaterally at 60 degrees. Additional orthopedics for the lumbar spine were positive. Due to possible differential diagnoses of spinal nerve root encroachment, peripheral neuropathy, peripheral nerve entrapment and post-traumatic injury, EMG/NCV studies were performed. The lower extremity EMG as revealing acute denervation process in L2-L4, L4-L5, L4-L5-S1 innervated muscles and L2-L4, L4-5 paraspinals on the right compatible with L4, L5 radiculopathy on the right. As to the upper extremity, Dr. Karlin noted no electrical evidence of cervical radiculopathy.

Rebuttal. Dr. Sangavaram has submitted a rebuttal to the peer review. He reviewed the findings of the treating providers who, contrary to the assertions of the peer review, did

note positive neurological findings and both complaints and clinical findings that supported diagnoses of cervical and lumbar radiculopathy. He then discussed the necessity of the studies:

Epidural Steroid Injections (ESIs) are relatively painless needle-based procedures. They are commonly used as treatment for both acute and chronic pain conditions. Epidural Steroid Injections (ESIs) are a common method of treating inflammation associated with low back related leg pain, or neck related arm pain- In both of these conditions, the spinal nerves become inflamed due to narrowing of the passages where the nerves travel as they pass down or out of the spine.

Based on these and in accordance with the New York State Workers Compensations Treatment Guidelines, the epidural steroid injections performed were medically necessary in order to treat radicular symptoms of the patient. Additionally, MRI of the cervical spine showed central disc herniations at C5-C6 and central disc bulge at C6-C7 levels, and MRI of the lumbar spine showed L5-S1 mild central disc bulge. EMG/NCV of the lower extremities also revealed L4 and L5 radiculopathy on the right.

Dr. Sangavaram took issue that the subsequent interpretation of the EMG/NCV of no cervical radiculopathy did not warrant the earlier performed procedures:

I would also like to point out that EMG/NCV whether positive or negative does not determine the necessity of epidural steroid injection, but rather, looking at the findings from all examinations and diagnostic test as whole in order to come up with the proper treatment of the patient. Thus, based on the findings on examination and positive orthopedic tests, epidural steroid injection was the best option to treat the patient's radicular symptoms.

He cited NYS Workers' Compensation Board Medical Treatment Guidelines which found the procedures medically necessary especially after an extensive course of failed conservative. Finally, he found the specific type of anesthesia medically necessary.

The use of anesthesia during interventional pain management procedures was also important to enhance patient comfort by reducing anxiety and unnecessary movements and minimizing pain to improve tolerance of

the procedure, making the procedure safer for the patient due to lack of movement. According to the American Society of Anesthesiologists (ASA), a monitored anesthesia care (MAC)-utilized in this case for the injections-is a planned procedure during which the patient undergoes local anesthesia together with sedation and analgesia. <sup>4</sup> MAC carries the advantage of invoking less physiologic disturbance and allowing for a more rapid recovery and discharge rate than general anesthesia. By using drugs with favorable pharmacokinetic profiles, many outpatient operations and satellite procedures are now performed under a MAC technique.

Analysis. A presumption of medical necessity attaches to a Respondent's admission of the Applicant's timely submission of proper claim forms. The Respondent then bears the burden to prove that the treatment was not medically necessary *Kings Med. Supply Inc. v. Country-Wide Ins.*, 5 Misc.3d 767 (2004); *Behavioral Diagnostics v. Allstate Ins. Co.*, 3 Misc.3d 246 (2004); *A.B. Med. Servs v. Geico Ins.* 2 Misc.3d 16 (App. Term 2d Dept. 2003). In this case, the peer review must submit "objective testimony or evidence to establish that his opinion is what is generally accepted in the medical profession." *Williamsbridge Radiology v. Travelers*, 14 Misc.3d 1231(a) (Civ. Ct Kings Co. 2007). When a carrier uses a peer review as basis for the denial, the report must contain evidence of the applicable generally accepted medical/professional standards as well as the provider's departure from those standards. *Acupuncture Prima Care v. State Farm Mut. Auto Ins. Co.* 17 Misc. 3d 1135 (Civ. Ct. Nassau, 12/03/07). Therefore, a peer reviewer must thoroughly review the relevant medical records and give evidence of generally accepted medical standards. Then, through careful analysis, the peer reviewer must apply those standards to the facts to document that the treatment in question was not medically necessary. See: *CityWide Social Work & Psychological Services v. Travelers Idem. Co.*, 3 Misc.3d 608, 609 (Civil Ct. Kings Co. 2004).

As a finding of fact, the peer review is not persuasive. Dr. Povzhitkov failed to accurately and thoroughly review the positive clinical and diagnostic findings prior to the procedures in dispute. The MRI studies documented multiple herniations and various provides documented positive orthopedic and neurological findings with assessments that included cervical and lumbar radiculopathy. The peer review failed to adequately discuss these findings. A peer review must incorporate, discuss and review the patient's medical history including all positive clinical and diagnostic findings. *Carle Place Chiropractic v. New York Central Mut. Fire Ins. Co.*, 19 Misc.3d 1139(A), (Dist. Ct. Nassau Co., Andrew M. Engle, J., May 29, 2008).

The peer review also opined the diagnostic studies had findings of pre-existing conditions and that the Assignor was morbidly obese. However, Exacerbation of pre-existing conditions are covered by the No-Fault law. *Kingsbrook Jewish Medical Center v. Allstate Insurance Co.*, 61 A.D.3d 13 (2d Dept. 2009). Exacerbation of

pre-existing conditions are covered by the No-Fault law. *Kingsbrook Jewish Medical Center v. Allstate Insurance Co.*, 61 A.D.3d 13 (2d Dept. 2009). Further, the old adage of the "egg shell plaintiff" is also applicable to No-Fault. The rebuttal of Dr. Sangavaram is persuasive. It specifically addressed the issues raised by the peer review as well as citing authoritative sources. The rebuttal was more persuasive and credible than the peer review. The Respondent has failed to sustain its burden of proof of lack of medical necessity. *Nir v. Allstate Insurance Company*, 7 Misc.3d 544, 546, 547 (2005). Applicant is awarded reimbursement for the treatment in dispute.

DOS: 12/11/19 On December 11, 2019, Dr. Sangavaram performed caudal epidural steroid injections at the Coccyx under fluoroscopy for a diagnosis of coccygodynia, radiculopathy, myalgia. Epidurography was performed for radiculopathy. He also performed trigger point injections B/L cervical and thoracic paraspinal muscles for a diagnosis of myalgia.

The Respondent denied reimbursement for the procedures with the following statement, "Review of the peer review results and/or other document does not reimbursement for these services". However, as a finding of fact, the Respondent has failed to exchange a peer review directly addressing the procedures performed on this date. In sum, the Respondent has the burden of proving lack of medical necessity. Without the submission of peer review to support its contention, the Respondent has failed to sustain that burden.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: *LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co.*, 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

**APPLICANT IS AWARDED REIMBURSEMENT OF \$2,279.21, TOGETHER WITH INTEREST AND ATTORNEYS'S FEES.**

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	Amount Amended	Status
	Accelerate d Surgical Center of North Jersey	11/13/19 - 11/13/19	\$2,456.78	\$1,213.07	Awarded: \$1,213.07
	Accelerate d Surgical Center of North Jersey	12/11/19 - 12/11/19	\$1,679.94	\$1,066.14	Awarded: \$1,066.14
Total			\$4,136.72		Awarded: \$2,279.21

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/19/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

- 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 Orange

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

02/17/2021  
(Dated)

Kent Benziger

**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:**

1d06b91c01408f17d218da8e63d6270e

### **Electronically Signed**

Your name: Kent Benziger  
Signed on: 02/17/2021