American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Pain Specialists PC (Applicant)	AAA Case No.	17-19-1141-8745
	Applicant's File No.	00046874
- and -	Insurer's Claim File No.	IAN0077
	NAIC No.	38130
Travelers Personal Insurance Company (Respondent)		

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 02/17/2021
   Declared closed by the arbitrator on 02/27/2021

   Justin Rosenbaum, Esq. from Drachman Katz, LLP participated by telephone for the Applicant

   Tamara Lefranc, Esq. from Law Offices Of Tina Newsome-Lee f/k/a Aloy O. Ibuzor participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 545.10**, 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 claimant was a 32 year-old female restrained driver of a motor vehicle that was involved in an accident on 11/27/18. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue is the medical necessity of 6/14/19 nerve blocks performed by Applicant that Respondent timely denied reimbursement for based on a 8/13/19 peer review by Manan Patel, M.D.

4. Findings, Conclusions, and Basis Therefor

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

The claimant was a 32 year-old female restrained driver of a motor vehicle that was involved in an accident on 11/27/18. The claimant reportedly injured her neck, right shoulder, mid back, and lower back. There was no reported loss of consciousness. There were no reported lacerations or fractures. There was no reported emergency treatment sought or received. On 11/28/18 the claimant presented to Hong Pak, M.D. of Metro Pain Specialists, P.C. (Applicant) with complaints of headaches, neck pain radiating to the right upper extremity, right shoulder pain, mid back pain, and low back pain radiating to the bilateral lower extremities. Pain was rated 7-9/10. Right shoulder examination revealed restricted range of motion in all planes (quantified) and positive for crepitus and impingement. Cervical examination revealed restricted range of motion in all planes (quantified) and Spurling's test positive bilaterally. Lumbosacral examination revealed restricted range of motion in all planes (quantified) and SLR was positive at 45° bilaterally. The claimant was recommended for physical therapy, pain consultation, neurologic consultation, orthopedic consultation, chiropractic consultation, acupuncture consultation, and MRIs (head, right shoulder, cervical spine, and lumbar spine). Dr. Pak prescribed Flexeril, Ibuprofen 800, Diclofenac 3% gel, and durable medical equipment (DME) consisting of infrared heating lamp, LSO, EMS unit with placement belt, bedboard, foam rubber mattress, cervical pillow, orthopedic car seat support and cervical collar. Contemporaneously or subsequently the claimant was initiated on physical therapy, chiropractic treatment, acupuncture, and cupping. On 1/9/19 Elton Williams, M.D. of Applicant's office conducted a follow-up examination that was substantially similar to that of 11/28/18. Dr. Williams prescribed Flexeril, Lidocaine 5% ointment, 60 MedX patches. On 1/24/19 Thoden Chiropractic, P.C. prescribed DME consisting of a cervical posture pump and a custom-fitted lumbosacral orthosis with APL control. The 1/24/19 lumbar spine MRI interpreted by Barbara Moriarty, M.D. produced an impression of at L4-L5 there is a left foraminal disc herniation impressing on the adjacent nerve root and at L5-S1 there is a small central disc herniation impressing on the thecal sac. On 2/7/19 Life Care Physical Therapy (Life Care) conducted computerized range of motion and manual muscle testing (ROM/MMT). On 2/14/19 John Greco, M.D. of Applicant's office conducted a follow-up examination. Right shoulder examination revealed no tenderness and normal range of motion. Cervical examination revealed normal range of motion, but with mild pain. Deep tendon reflexes, manual muscle strength, and sensation were normal. Thoracic examination revealed mild muscle spasms and tenderness. Lumbar examination revealed range of motion was: flexion 75/90, extension 20/30, bilateral rotation 30/45, and bilateral lateral flexion was normal (30/30). SLR was not indicated

as positive. Deep tendon reflexes, manual muscle strength, and sensation were normal. The claimant was recommended to continue on physical therapy 3 times per week for 4 weeks. On 2/14/19 Applicant supervised Outcome Assessment (OSWESTRY) Testing (OAT). On 2/15/19 (on referral from Dr. Pak) Paul John Hannan, M.D. conducted upper extremities and lower extremities EMG/NCV that suggested evidence consistent with right C5, C6 nerve root irritation and bilateral L4-L5 lumbosacral radiculopathy. On 3/18/19, 3/20/19, and 3/25/19 Alex Khait, D.C. (co-surgeon) and Avi Weinberger, D.C. (co-surgeon) performed manipulation under anesthesia. On 3/27/19 the claimant presented to Camari Wallace, M.D. of Applicant's office for an "initial evaluation" with complaints of radiating low back pain rated 6 /10 and radiating neck pain rated 8/10. Lumbar examination revealed range of motion was "restricted extension and lateral rotation bilateral, with end range discomfort noted. Palpation: Tenderness on palpation paravertebral over the Right and Left L3-4, L4-5, L5-S1 lumbar facet joints. Sacroiliac joints not tender on palpation bilateral. Tender trigger points felt at the lumbar spinalis, longissimus, iliocostalis, serratus posterior inferior and superior and gluteal muscles… Extension and Lateral Rotation: positive on the right and left side." Dr. Wallace's diagnostic impression was "Right and Left C2-3, C3-4, C4-5, C5-6, C6-7, C7-T1 Cervical Facet Syndrome; Right and Left Cervical Radiculopathy; Right and Left L3-4, L4-5, L5-S1 Lumbar Facet Syndrome; [and] Fibromyositis." Dr. Wallace's treatment plan included "Cervical facet steroid injections of the affected levels; Lumbar facet steroid injections of the affected levels; 1 to 3 cervical interlaminar epidurals steroid injections depending on response to treatment; [and] Trigger point injections at the affected trigger points." On 4/9/19 Applicant supervised OAT. On 4/13/19 Applicant ordered a comprehensive urinalysis drug screening. On 4/13/19 Dr. Wallace performed bilateral L3, L4, L5 Lumbar Medial Branch Nerve Blocks under fluoroscopic guidance. On 4/27/19 Dr. Wallace performed cervical epidural steroid injections and an Epidurogram. On 5/7/19 the claimant underwent physical capacity (NIOSH) testing (FCE) conducted by Life Care. On 5/21/19 Applicant supervised OAT. On 5/23/19 Life Care conducted ROM/MMT. On 6/13/19 the claimant underwent FCE conducted by Life Care. On 6/14/19 Applicant ordered a comprehensive urinalysis drug screening. On 6/14/19 Dr. Wallace performed bilateral L3, L4, L5 Lumbar Medial Branch Nerve Blocks under fluoroscopic guidance. At issue are the 6/14/19 nerve blocks performed by Applicant.

The burden has shifted to the Respondent as they have raised a medical necessity defense. In order to support a lack of medical necessity defense Respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, *Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op. 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 20140. Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to Applicant. See generally, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op. 52116 (App. Term 1st Dept. 2006). As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and the arguments presented at the arbitration. Moreover, the case law is clear that a provider must rebut the conclusions and determinations of the IME/peer doctor with his own facts. *Park Slope Medical and Surgical Supply, Inc. v. Travelers*, 37 Misc.3d 19 (2012).

Respondent timely denied the 6/14/19 nerve blocks based on the 8/13/19 peer review by Manan Patel, M.D. After reviewing the claimant's history, treatment, and medical records, Dr. Patel asserts "in regards to the repeat lumbar medial branch block the following should be noted [*citation omitted*]: As per the, 2017 NIA Clinical Guidelines for Medical Necessity Review, MUSCULOSKELETAL AND SURGERY GUIDELINES, Paravertebral Facet Joint Injections/Blocks, FREQUENCY OF FACET BLOCK:-" 1) There must be a minimum of 14 days between injections. 2) There must be a positive response of > 50% pain relief or improved ability to function or a change in technique from an initial intra-articular facet block to a facet joint nerve block can be considered. Repeat therapeutic injections should be performed at a frequency of 2 months or longer provided that at least 50% relief is obtained for a minimum of 2 months after the previous injection. The patient is actively engaged in other forms of active conservative non-operative treatment if the patient is receiving therapeutic facet joint injections unless pain prevents the patient from participating in conservative therapy*)." Dr. Patel opines "in this case, the claimant was provided with a lumbar medial branch block injection on 04/13/2019. As per the report dated 06/14/2019 by Camari Wallace, M. D., it was reported that the claimant had 50% relief for only a week with the injection provided on 04/13/2019. The claimant was actively engaged in conservative treatment in the form of acupuncture treatment, physical therapy, chiropractic treatment and cupping therapy. However, the claimant's lower back pain was reduced to 6/10 from 9/10 on the pain scale. This indicated that there was 30% pain reduction with the provided injection and the following conservative therapy sessions. Whereas as per the above guideline "repeat therapeutic injections should be performed at a frequency of 2 months or longer provided that at least 50% relief is obtained for a minimum of 2 months after the previous injection." There was no documented evidence about the functional improvement as a result of the injection dated 04/13/2019. Therefore, based on the available medical records and cited guideline the repeat lumbar medial branch block injection was not medically necessary." Dr. Patel continues "in regards to the office visit, the following should be noted [citation omitted]: As per the, EM University Level 3 Established Office Visit (99213): "This level of care is located "in the middle' of the coding spectrum for office visits with established patients. Usually the presenting problems are of low to moderate severity. The documentation for this encounter requires TWO out of THREE of the following: Expanded Problem Focused History; Expanded Problem Focused Exam; [*and*] Low Complexity Medical Decision-Making." In this case, the office visits dated 06/14/2019 by Camari Wallace, M.D., consisted of expanded problem focused history and low complexity medical decision-making of performing injections. Hence, the office visit dated 06/14/2019 was medically necessary." Dr. Patel concludes "in regards to Causality, the following should be noted: [*the claimant*] is reported to be a 32-year-old female who was involved in a motor vehicle accident on 11/27/2018 as a restrained driver. As per the independent neurological evaluation report dated 03/22/2019 by Uriel Davis, D.O., the claimant had a prior MVA on 08/13/2017, sustaining an injury to the lower back with no residuals. Also, there appears to be a cause and effect relationship between the injuries sustained to the lower back and the accident reported. In addition, as per the report dated 03/27/2019 by Camari Wallace, M.D., the claimant reported no lower back complaints prior to the accident. Hence, after the careful review of the submitted documentation, there was a causal relationship between the claimant's subjective complaints of the lumbar spine and the subject motor vehicle accident dated 11/27/2018. Reference(s): [omitted]…Based on

the review of the provided documentation, medical guidelines for the service in question and my experience as a PM/Anesthesiologist, I have come to the following conclusion. Injection(s), diagnostic or therapeutic agent, paravertebral facet (zygapophyseal) joint (or nerves innervating that joint) with image guidance (fluoroscopy or CT), lumbar or sacral; single level under CPT code 64493-50, Injection(s), diagnostic or therapeutic agent, paravertebral facet (zygapophyseal) joint (or nerves innervating that joint) with image guidance (fluoroscopy or CT), lumbar or sacral; second level under CPT code 64494-50 and Injection(s), diagnostic or therapeutic agent, paravertebral facet (zygapophyseal) joint (or nerves innervating that joint) with image guidance (fluoroscopy or CT), lumbar or sacral; third and any additional level(s) under CPT code 64495-50 performed on 06/14/2019, provided by SCOB, LLC, Injection(s), diagnostic or therapeutic agent, paravertebral facet (zygapophyseal) joint (or nerves innervating that joint) with image guidance (fluoroscopy or CT), lumbar or sacral; single level under CPT code 64493-LT and RT, Injection(s), diagnostic or therapeutic agent, paravertebral facet (zygapophyseal) joint (or nerves innervating that joint) with image guidance (fluoroscopy or CT), lumbar or sacral; second level under CPT code 64494-LT and RT, Injection(s), diagnostic or therapeutic agent, paravertebral facet (zygapophyseal) joint (or nerves innervating that joint) with image guidance (fluoroscopy or CT), lumbar or sacral; third and any additional level(s) under CPT code 64495-LT and 64495-RT, performed on 06/14/2019 provided by Metro Pain Specialists, P. C., was not medically necessary. However, Doctor's visit for the evaluation of an established patient for expanded examination and history of a problem requiring a fairly simple medical decision under CPT code 99213-25, was medically necessary and there was causal relationship with the MVA."

Where the Defendant insurer presents sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to the Plaintiff which must then present its own evidence of medical necessity (see Prince on Evidence section 3-104, 3-202). *West Tremont Medical Diagnostic PC v. Geico*, 13 Misc.3d 131, 824 N.Y.S. 2d 759.

Applicant submitted an 11/28/20 peer rebuttal by Camari Wallace, M.D. After reviewing the claimant's history, treatment, and medical records, Dr. Wallace asserts "that immediately after the 4/13/19 injections, the patient reported 100% pain relief, therefore diagnosing facet syndrome. Following this, the patient received a continued 50% pain relief, however the pain subsequently returned." Dr. Wallace explains "facet pain results from abnormal loading and excessive stress secondary to poor posture, decreased spine mechanics, trauma (e.g., whiplash), fracture, inflammation, degenerative disc changes, degenerative facet arthropathy and spondylolisthesis [*Citation omitted*]. Facet joints are a clinically important source of cervical, thoracic and lumbar spine pain. The facet joints are innervated by the medial branches of the dorsal rami. They are capable of causing pain in the cervical, thoracic, and lumbar back. This pain can be referred to the upper extremity, chest wall and lower extremity often mimicking a disc related radiculopathy. Medical imaging has been shown to be of little value in diagnosing the facet as a source of pain. In neck pain, the facet can be the source of pain in up to 67% of patients. For lower back pain this can up to 45% of patients. This condition is very prevalent in patients post motor vehicle accidents. Barnsley et al and Lord et al found that 54% of subjects studied after suffering whiplash injuries had facet joint pain [*Citation omitted*]. In finding patients likely to have lumbar

facet pain, also known as lumbar facet syndrome, Helbig and Lee found that patients with back pain, paraspinal tenderness and reproduction of pain with extension-rotation maneuvers would respond to joint injections. Sometimes the pain would extend to the groin or thigh but less frequently below the knee [*Citation omitted*]. In the case of this patient, they met inclusion criteria including lower back pain, tenderness and reproduction of pain with extension and rotation. The extent of this pain is directly related to the accident [*Citation omitted*]. Fluoroscopically guided therapeutic facet joint injections may be considered for a select group of patients with chronic low back pain (back pain) who have completed a full course of conservative management, including but not limited to medication, modalities, active exercises, and have chronic pain believed to be the result of facet dysfunction...Based on all these findings, the patient's condition was consistent with the New York Mid an Low Back Injury Medical treatment Guidelines." Dr. Wallace continues "a lumbar medial branch block is a procedure for diagnosing and treating low back, buttock, and hip and groin pain. This is a diagnostic and therapeutic procedure. A medial branch nerve block temporarily interrupts the pain signal being carried by the medial branch nerves that supply a specific facet joint and helps to determine which facet joint is causing pain. Fluoroscopy, a type of x-ray is used to ensure safe and proper position of the needle. Medial branch blocks have been used to treat non radicular/somatic pain originated from facet joint. Studies have shown medial branch block presented positive results for both short- and long-term relief. A recently published Guideline (Manchikanti, 2003) concludes that there is strong evidence of short term relief and moderate evidence of long term relief of pain of facet joint origin. Marks et al compared the effects of intra-articular anesthetic and corticosteroid with medial branch blocks in a study of 86 patients with chronic low back pain. The role of medial branch blocks in the diagnosis of facet joint pain has been well described and superior to intra-articular comparative local anesthetic blocks. Manchikanti et al studied patients who had a diagnosis of facet joint mediated pain confirmed by controlled diagnostic blocks. A total of 73 patients were enrolled in the study. This study showed significant improvement with therapeutic medial branch blocks in both groups in all aspects including functional status, drug intake, return to work, and improvement in the psychological status. This study showed that cumulative significant relief with 1 to 3 injections was 100% up to 1 to 3 months, 82% for 4 to 6 months, 21% for 7 to 12 months, and 10% after 12 months with a mean relief of 6.5 + 0.76 months. There was significant difference noted in overall health status with improvement not only in pain relief, but also with physical, functional, and psychological status, as well as return to work status. Facet joint injection is an effective modality of treatment for chronic pain syndromes. In addition to providing therapeutic benefits, this procedure is also useful for diagnostic, prognostic, or prophylactic indications, or for a combination of these purposes. Medial Branch Blocks often help the treating practitioner determine the anatomic origin of the patient's pain. An article from Pain Physician 2009 states that "the evidence for diagnosis of lumbar facet joint pain with local anesthetic blocks is level I." Therefore, there was no need to perform an additional diagnostic injection to confirm the posterior elements and pain generator. An article from Pain Physician March/April 2009; 12(2); 437-460; noted that " Systematic Assessment of Diagnostic Accuracy and Therapeutic Utility of Lumbar Facet Interventions," states that evidence for diagnosis of lumbar facet pain with controlled local anesthetic blocks is level I and II." Dr. Wallace concludes "moreover, the role of the doctor is not only to cure but to comfort through palliative care. This is the true standard of care and the purpose of these injections. Each

was administered as a means to treat the patient, who was in substantial pain."

Based on a totality of the evidence and the parties' arguments, I find in favor of the Applicant. Weighing the evidence of both parties, I find Applicant's evidence and arguments more persuasive as to the medical necessity of the services. Dr. Wallace noted the positive findings on examination and why those necessitated the injections at issue. Dr. Wallace's rebuttal sufficiently refuted Dr. Patel's peer review. Accordingly, Applicant is awarded $545.10.

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**
	Metro Pain Specialists PC	**06/14/19 - 06/14/19**	**$545.10**	**Awarded: $545.10**
Total			**$545.10**	**Awarded: $545.10**

B. The insurer shall also compute and pay the applicant interest set forth below. 09/17/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 9/17/19 (the date that arbitration was requested) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

Pursuant to 11 NYCRR §65-4.6 (d), ". . . the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant for arbitration or court proceeding, subject to a maximum fee of $1,360."

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

03/19/2021
(Dated)

Charles Blattberg

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:
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Electronically Signed

Your name: Charles Blattberg
Signed on: 03/19/2021