American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Progressive Medical Care, PC (Applicant)	AAA Case No.	17-20-1156-4746
	Applicant's File No.	CF13009664
- and -	Insurer's Claim File No.	0289405550101061
	NAIC No.	22063
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Michelle Murphy-Louden, 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 08/19/2021
   Declared closed by the arbitrator on 09/14/2021

   Tinamarie Franzoni, Esq. from Choudhry & Franzoni, PLLC participated in person for the Applicant

   Jason Ciani, Esq. from Law Office of Daniel R. Archilla participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 4,910.00**, 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

   Whether Applicant is entitled to reimbursement for Trigger Point Impedance Imaging (TPII) and Localized Intensive Neurostimulation Treatment (LINT) performed on November 21, 2019, and November 26, 2019, as the result of a September 24, 2019, motor vehicle accident.

   Respondent denied reimbursement based upon a January 9, 2020, peer review of Edward Weiland, M.D.

Respondent also asserted the defense that Applicant's fees were not in accordance with the Fee Schedule.

This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments of the parties and any testimony given during the hearing.

4. Findings, Conclusions, and Basis Therefor

As an initial matter, it is to be noted that this case was heard in conjunction with linked AAA Case No. 17-20-1156-5118 which involved Applicant's claim for TPII and LINT performed on October 30, 2019. The evidence submitted by the parties in this and the linked case was reviewed and considered herein.

The 42 year old EIP was reportedly involved in a motor vehicle accident on September 24, 2019, when the vehicle in which she was the restrained driver was struck on the front driver's side causing the vehicle to spin.

According to the records, on September 30, 2019, the EIP presented for initial neurologic evaluation with Allan Hausknecht, M.D., reportedly complaining in part of back pain and stiffness. Examination reportedly revealed in part severe tenderness over the lumbar paraspinal muscles and bilateral quadratus lumborum, severe lumbar paravertebral muscle spasm, and multiple trigger points bilaterally at L3-S1. Dr. Hausknecht diagnosed the EIP in part with lumbar myofascial derangement and lumbar sprain and recommended physical therapy.

On October 15, 2019, the EIP was seen in follow-up by Dr. Hausknecht reportedly complaining in part of back pain "with left leg" and back stiffness. Examination reportedly revealed in part thoracic paraspinal muscle spasm and tenderness, severe tenderness over the lumbar paraspinal muscles and bilateral quadratus lumborum, and severe lumbar paravertebral muscle spasm, and multiple trigger points bilaterally at L3-S1. Dr. Hausknecht additionally diagnosed the EIP with thoracic sprain and recommended physical therapy.

On October 30, 2019, the EIP underwent TPII and LINT at ten identified lumbar spine trigger points. The EIP reported 20% relief of pain since baseline evaluation.

On October 31, 2019, the EIP was seen in follow-up by Dr. Hausknecht reportedly complaining in part of back pain and stiffness. Dr. Hausknecht documented that a lumbar MRI performed on October 18, 2019, revealed L3-L4 and L4-L5 disc bulging

mildly narrowing the bilateral foramina. Examination reportedly revealed in part thoracic paraspinal muscle spasm and tenderness, severe tenderness over the lumbar paraspinal muscles and bilateral quadratus lumborum, and severe lumbar paravertebral muscle spasm, and multiple trigger points bilaterally at L3-S1. Dr. Hausknecht recommended continuation of physical therapy.

On November 21, 2019, the EIP underwent TPII and LINT at ten identified thoracic spine trigger points. The EIP reported 25% relief of pain since baseline evaluation.

On November 26, 2019, the EIP again underwent TPII and LINT at ten identified thoracic spine trigger points. The EIP reported 30% relief of pain since baseline evaluation.

On November 29, 2019, the EIP was seen in follow-up by Dr. Hausknecht reportedly complaining in part of back pain radiating to the bilateral buttocks and back stiffness. Examination reportedly revealed in part thoracic paraspinal muscle spasm and tenderness, severe tenderness over the lumbar paraspinal muscles and bilateral quadratus lumborum, and severe lumbar paravertebral muscle spasm, and multiple trigger points bilaterally at L3-S1. Dr. Hausknecht recommended continuation of physical therapy and also administered L3-S1 trigger point injections.

RESPONDENT'S PEER REVIEW

On January 9, 2020, Edward Weiland, M.D., performed a peer review of the TPII and LINT performed on October 30, 2019 (misidentified as October 25, 2019) which he concluded was not medically necessary. Dr. Weiland opined in significant part:

> An extensive literature review search of neurologic peer review literature does not indicate there is any medical necessity for the performance of a TPLL/LINT procedure to treat musculoskeletal trauma. There is a lack of documentation to indicate that there is any clinical efficacy or medical necessity for the utilization of this procedure to treat soft tissue trauma with radicular symptoms. Therefore, it is outside the standard of care for this type of injury reportedly sustained by [the EIP]. As previously indicated, trigger points can be palpated and clinically significant medical care and treatment can be rendered to this site without the utilization of this type of procedure.
>
> As identified in the article entitled, "Auto-targeted Neurostimulation is Not Superior to Placebo in Chronic Low Back Pain: A Fourfold Blind Randomized Clinical Trial," as identified by Drs. Ferrandiz, et. all in Pain Physician 2016; 19:E707-E719 * ISSN 2150-1149, the doctors concluded, "the results of the

current fourfold - blind randomized trial show that six sessions of auto-targeted neurostimulation with a Nervomatrix device did not result in any clinically important short-term benefits over placebo for pain... "

Trigger point injections should be reserved for patients in whom other interventions have failed. Trigger point injections are not indicated for nonspecific acute or chronic low back pain, and sacroiliac joint injections are not indicated in the routine management of low back pain. (Nonsurgical Management of Acute and Chronic Low Back Pain. Andersson, et al, Journal American Academy of Orthopedic Surgery, Vol 14. No.8, Aug. 2006: 477-487.)

…The medical record submitted for review indicated that [the EIP] was undergoing a course of multi-modality rehabilitation treatments for her reported soft tissue injuries felt to be causally related to the motor vehicle accident occurring on 09/24/19 to include physical therapy, chiropractic spine care, as well as acupuncture treatments. Physical therapy treatment modalities would include electrical stimulation. Therefore, the performance of a separate hyper electric stimulation treatment as performed by Dr. Hausknecht on 10/25/19 would represent a duplication of services already being provided by the registered physical therapist.

Dr. Hausknecht did have an opportunity to perform a follow up neurologic evaluation on 10/15/19. At this time, Dr. Hausknecht clearly identified that there were multiple trigger points noted in the cervical and lumbar paraspinous musculature associated with paravertebral muscle spasm and tenderness to palpation at these sites. Decreased mobility associated with positive mechanical signs were also noted in the area of the right shoulder and left hip. Paravertebral muscle spasm and tenderness to palpation was also noted in the area of the thoracic spine.

The neuromuscular examination findings submitted by Dr. Hausknechton on 10/15/19 did indicate the presence of trigger points in the posterior aspect of the spine. Therefore, the performance of a separate trigger point impedance imaging study as completed under the direction of Dr. Hausknecht on 10/25/19 would also represent a duplication of clinical information already obtained by the treating neurologist during a neuromuscular examination. The results of this diagnostic test therefore would not have clarified any specific differential diagnosis or alter any specific treatment protocols as it relates to the incident date under review. Dr. Hausknecht had previously performed trigger point injection procedures based upon his clinical examination findings. Therefore, the utilization of this test result would not have been clinically appropriate and/or medically necessary to assist [the EIP] from recovering from any trauma that she reportedly sustained from a motor vehicle accident occurring approximately one month earlier.

> Therefore, I can recommend no reimbursement for these procedures at the present time under the claimant's No-Fault health insurance benefits as it relates to the incident date of 09/24/19.

Based upon Dr. Weiland's opinion, Respondent denied Applicant's claim.

ANALYSIS

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s). Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); Tahir v. Progressive Cas. Ins. Co., 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co., 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); Millennium Radiology, P.C. v. New York Cent. Mut. , 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co., 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co., 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Dr. Weiland's peer review fails to set forth a clear factual basis and a medical rationale for Respondent's denial of Applicant's claim for the TPII and LINT in dispute herein and as such I find that Respondent has failed to establish a lack of medical necessity for same.

Discussing first Dr. Weiland's cited authorities, the citation to the Journal of American Academy of Orthopedic Surgery article is not applicable in this matter as the treatment at issue is not trigger point injections. While the cited Pain Physician article is on point, Respondent also submitted herein an article from Journal of Pain Research (2013 June 25, doi: 10.2147/JPR.S47540) which states that "hyperstimulation analgesia", as was performed in this case, "has been investigated in several controlled studies, showing a positive response in 87% of patients." Respondent's own evidence indicates that the experts differ on the efficacy of TPII/LINT and the Journal of Pain Research article contradicts Dr. Weiland's opinion.

As regards Dr. Weiland's opinion that LINT was a duplication of the electrical stimulation provided in physical therapy, such treatment would have either been provided via a TENS or EMS unit which is not capable of covering the same surface area as LINT.

As regards Dr. Weiland's opinion that TPII represented a duplication of the neuromuscular examination performed by Dr. Hausknecht which identified multiple trigger points, while Dr. Hausknecht identified trigger points at four levels bilaterally (for a total of eight trigger points) the TPII identified ten trigger points which would indicate that TPII has a higher sensitivity factor than physical palpation.

Finally, as regards Dr. Weiland's statement that Dr. Hausknecht previously performed trigger point injections based upon his clinical examination findings, I see no evidence of that in the records. The only examination report documenting the performance of trigger point injections is Dr. Hausknecht's November 29, 2019, examination report which is after the dates on which the TPII and LINT in dispute in this and the linked case were performed.

Therefore, based upon the foregoing, Respondent's denial cannot be upheld.

AMOUNT AWARDED

Respondent contended that the independent fee audit prepared by Lorena Villalobos, CPC, which was submitted into evidence by Applicant in support of its fees, was conclusory and somewhat confusing as to how Applicant's fees were calculated. Respondent also contended that although Applicant submitted proof that other insurers reimbursed Applicant's fees as charged Applicant did not submit proof that one of those insurers was Respondent.

Applicant conceded that arbitrators have "gone many different ways" on the issue of the allowable reimbursement rate for the treatment in dispute in this matter, with some arbitrators awarding the amounts charged and some awarding lesser amounts.

Due to the lack of more definitive guidance as to the allowable reimbursement rate for the treatment in dispute in this matter, the undersigned requested evaluation by an independent fee coder through AAA.

In a report prepared by Joyce Ehrlich, MS, MPA, CPMA, CPCO, DEMA, CPB, it was determined that the allowable Fee Schedule amount for the TPII and LINT in dispute

was $283.61 per date of service for a total Fee Schedule amount of $567.22. Ms. Ehrlich provided the following analysis in support of her conclusion:

III. CPT 95999 - Unlisted neurological/neuromuscular procedure

Reviewer Villalobos advises that NVX is a unique non-invasive procedure, best described as a physiological MRI. She equates reimbursement for TPII to that of an MRI of the Thoracic and Lumbar section of the spine and states that RVU's of 34.8 should be utilized. A Thoracic MRI is reimbursed as CPT code 72146 at the rate of 18.14 RVU's and a Lumbar Spine MRI is reimbursed as CPT code 72148 at the rate of 17.24 RVU's which equals 35.38 RVU's, not 34.8 RVU's.
I disagree with Reviewer Villalobos and the use of the combined RVU's from a Thoracic and Lumbar spine MRI to arrive at a reasonable and customary amount. By definition, Magnetic resonance imaging (MRI) is a medical imaging technique used in radiology to form pictures of the anatomy and the physiological processes of the body. MRI scanners use strong magnetic fields, magnetic field gradients, and radio waves to generate images of the organs in the body. MRI does not involve X-rays or the use of ionizing radiation, which distinguishes it from CT and PET scans.

The technology used in an MRI is not comparable to the technology utilized by Nervomatrix. Nervomatrix technology precisely detects and maps more than 1000 points in the back where the skin's electrical impedance is lower than that of its surrounds, creating personalized trigger- point mapping for each patient in less than 2 minutes.
Further, based on the 510K Summary of Safety and Effectiveness submitted by Nervomatrix to the FDA for approval, the intended use is the following: *"NeMa-st is intended for Transcutaneous Electrical Nerve Stimulation (TENS) for back pain relief. NeMa-st is indicated for the relief and management of symptomatic chronic or intractable back pain and/or post- surgical back pain and/or post trauma back pain".*

Based on the above statement from the 510K, the device is described as a transcutaneous nerve stimulator used for pain relief. Applying MRI RVU logic to the diagnostic function of this device is simply not defensible and is not comparable in any form. The work, facility, and malpractice components of an MRI are not comparable to that of the Nervomatrix. The Nervomatrix website states the following: *"The entire process is computer controlled and automatic and can be administered by medical technicians with only minimal training".* The main focus of the Nervomatrix is the ability to diagnose and treat multiple trigger points simultaneously.

The fee for each service depends on its relative value units (RVUs), which rank on a common scale the resources used to provide each service. These resources include the physician's work, the expenses of the physician's practice, and professional liability insurance. RVUs define the value of a service or procedure relative to all services and procedures. This measure of value is based on the extent of physician work, clinical and nonclinical resources, and expertise

required to deliver the healthcare service to patients. RVUs ultimately determine physician compensation when the conversion factor (CF), dollars per RVU, is applied to the total RVU. Therefore, assigning the RVU value for a technology that is more resource intensive to one that is not comparable in work, resources, or expertise, is not defensible.
While Nervomatrix technology, is not comparable to ultrasound guidance, the use of CPT 76942 is more closely aligned from a work/facility/malpractice perspective. Therefore, I am inclined to support the use CPT 76942 as a comparable code for the diagnostic portion of this procedure. Ultrasound guidance for needle placement is not being performed, however TPII procedure provides a comprehensive diagnostic picture of the entire back. It provides the most comprehensive picture to determine where pain is originating. That is closely aligned with the function of an ultrasound guidance used for needle placement to alleviate pain.

CPT Code 76942 is reimbursed at a rate of $262.91 (4.97 RVU x $52.90 Radiology Conversion Factor).

IV. CPT 99199 - Localized Intense Neurostimulation Therapy (LINT)

Reviewer Villalobos advises that this service is less invasive than multiple trigger point injections and that an RVU of 37.71 was assigned to the treatment portion of the service. This includes 70% anesthesia (RVU 15.91) and 30% treatment (RVU 21.8).
I disagree with this reviewer's logic of assigning any RVU's to anesthesia, since anesthesia is not being performed in this case. There is no support for her calculation of how she arrived at the 37.71 RVU for the LINT.

Based on a letter provided by an ex-employee of Nervomatrix, a billing expert advised the company on the use of CPT 97032 as a crosswalk for CPT 99199 - LINT:

> *"After reviewing the product materials it is my personal and professional judgement that the Soleve (aka Nervomatrix) procedure falls under CPT 97032 making it reimbursable under those plans that cover such physical medicine and rehabilitation codes/procedures.*
> *The 97032 CPT code is a constant attendance manual electrical stimulation procedure described as, "Modality used to apply electrical current to a specific area. Attended electrical stimulation is also referred to as manual stimulation. Attended stimulation calls for the application of stimulation for shorter or more specific time frames and at varying degrees of current.*
> *The Soleve literature describes the unit as multi-phasic with varying degrees of frequency applied to a concentrated specific targeted area. This is all performed in the presence of a qualified attendant who can make adjustment to the settings as the situation calls for."*

The above excerpt supports the use of CPT 97032 as a comparable crosswalk for LINT. Therefore, the reimbursement would be as follows:
CPT 97032 is reimbursed at the rate of $20.70 (2.45 RVU x 8.45 Physical Medicine Conversion Factor) for each 15 minutes of service. The procedure report states that the LINT was performed for 2 minutes per site - 10 sites total = 20 minutes (1 unit).
In a press release put out by the CEO of Nervomatrix on March 22, 2011 the following statement was made:

> *"Since initial outlay is high, and pain clinics don't normally invest in expensive equipment, the device will be licensed to the clinics on a pay-per-use model. The average six-week treatment protocol could run in the $400 range depending on locations, says the company's CEO, Ori Kanner".*

While this statement was made over 10 years ago, it is more in line with the reimbursement suggested based on the use of CPT 76942 as the crosswalk for CPT 95999 and CPT 97032 as the crosswalk for CPT 99199.

It is to be noted that a copy of Ms. Ehrlich's complete report was provided to the parties prior to the issuance of the within Award and, there being no objections thereto, made a part of the ADR Center electronic case file for this matter.

Therefore, based upon the independent fee coder calculation, I find Applicant entitled to reimbursement in the amount of $567.22.

With respect to the amount of interest awarded Applicant herein, same is to be calculated in accordance with 11 N.Y.C.R.R. §65-3.9(c) as Applicant did not request arbitration within 30 days of receipt of the denial of claim form. The commencement date of the interest awarded shall be, per advisement of the Department of Financial Services, the date on which Applicant's request for arbitration was received by AAA. According to AAA's electronic case file Applicant's request for arbitration was received via e-mail by AAA on November 10, 2020. Therefore, Respondent shall pay Applicant interest commencing November 10, 2020, to the date of payment of this Award.

ACCORDINGLY, APPLICANT IS AWARDED THE AMOUNT OF $567.22 TOGETHER WITH INTEREST, ATTORNEY'S FEE, AND FILING FEE AS SET FORTH BELOW. THE REMAINDER OF APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.

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**
	Progressive Medical Care, PC	**11/21/19 - 11/26/19**	**$4,910.00**	**Awarded: $567.22**
Total			**$4,910.00**	**Awarded: $567.22**

B. The insurer shall also compute and pay the applicant interest set forth below. 11/10/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to 11 N.Y.C.R.R. §65-3.9(a), the insurer shall calculate interest at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month.

Pursuant to 11 N.Y.C.R.R. §65-3.9(c), if an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken.

Since Applicant herein did not request arbitration within 30 days of receipt of the denial of claim form, Respondent shall pay interest from the date the arbitration was

commenced as set forth above to the date of payment of the Award in accordance with 11 N.Y.C.R.R. §65-3.9(c).

C. Attorney's Fees

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

The insurer shall pay the Applicant an attorney's fee in accordance with 11 N.Y.C.R.R. §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 Nassau

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

09/15/2021
(Dated)

Michelle Murphy-Louden

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: Michelle Murphy-Louden
Signed on: 09/15/2021