

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Accelerated Surgical Center of North Jersey
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-21-1196-3721

Applicant's File No. 243448

Insurer's Claim File No. 78785-02

NAIC No. 24309

ARBITRATION AWARD

I, Stacey Charkey, 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 08/26/2021
Declared closed by the arbitrator on 08/26/2021

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

Christopher Fingerhut, Esq. from Law Offices of Rubin & Nazarian participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 5,334.10**, was AMENDED and permitted by the arbitrator at the oral hearing.

AR1 was reduced to \$1778.22 to comport with fee schedule.

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

3. Summary of Issues in Dispute

The Assignor, a then 56-year-old female, sustained injuries to the neck and back in a motor vehicle accident on September 15, 2018. Applicant seeks reimbursement for a facility fee in connection with cervical facet and lumbar trigger point injections of the

Assignor's cervical spine and lumbar spine performed on 5/29/19. Respondent denied payment based on a report dated 9/20/19 by Vijay Sidhwani, D.O. The issue presented is whether the services rendered to the Assignor on 5/28/19 were medically necessary.

4. Findings, Conclusions, and Basis Therefor

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter. The hearing was conducted via ZOOM.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms to the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio*, 100 NY2d 854, 768 NYS2d 423 (2003).

According to the records, the claimant was a 56-year-old female who was involved in a motor vehicle accident on 09/15/18 as an unrestrained rear passenger in a taxi that was involved in a collision. The assignor denied a loss of consciousness and she was taken to the emergency room where she reported right trapezius and lower back pain. The assignor denied any neurological complaints and presented without neurological deficits. Noted was a prior history of left foot and ankle surgery. The assignor was also noted to have a chronic limp, unrelated to the accident.

The assignor sought treatment with a multispecialty facility, Crosstown Medical, PC, where she was started on a course of chiropractic treatment, acupuncture as well as a course of physical therapy, which appears to have been directed to the thoracic spine and lumbar spine as well as the shoulder.

Additionally, a follow-up form submitted on 10/23/18 indicates non-radiating neck pain and stiffness as well as right shoulder pain and lower back pain with right shoulder pain noted to be radiating down the right upper extremity with numbness and tingling circled and underlined in this preprinted form. Physical examination of the cervical spine revealed mildly limited range of motion without any positive Spurling's test or any other positive provocative testing, suggesting no evidence of radiculopathy, consistent with EMG/NCV testing, conducted on 10/25/18, which also failed to reveal any evidence of cervical radiculopathy with indication of carpal tunnel syndrome documented at that time as conducted by Dr Orenstein.

In fact, according to the above neurological evaluation, I can find no evidence of radiating pain to the lower extremities or any focal neurological deficits pertaining to the

lower extremities as well. That is, if the claimant had been referred for EMG/NCV testing and lumbar radiculopathy was indicated, it would seem that this would be included in the above report. Additionally, I can find no evidence of lumbar radiculopathy reported by the treating physical therapist who was treating injuries alleged to the neck, back, bilateral knees and right shoulder. Furthermore, while radiating pain was alleged to the upper extremity, EMG/NCV testing failed to find any abnormality or radiculopathy as noted above.

Additionally, according to the above follow-up evaluation, conducted on 10/23/18, there was no indication of lumbar radiculopathy found at that time. However, while I have not been provided a report from Dr. Gorman, a lumbar epidural steroid injection was also routinely performed with trigger point injections and Epidurography on 12/04/18. These injections were repeated on 12/18/18 and 01/15/19 as well.

Additionally, the assignor was referred for several urine toxicology screening by Dr. Gorman, which was conducted on 12/18/18 and 01/15/19. There is no indication as to why these studies were necessary under the circumstances of the specific case.

On 02/5/19 assignor underwent further therapeutic injections, including cervical medial branch block injections under anesthesia..

Additionally, records indicate that further Cervical epidural steroid injections were conducted on 03/26/19 in addition to urine drug testing conducted on 03/12/19. Cervical facet injections, trigger point injections and lab testing, was conducted on 05/29/19. The treatments at issue are the Cervical Paravertebral Facet Joint Block under Fluoroscopic Guidance and Lumbar Paraspinal Trigger Point Injection performed on May 29, 2019.

Vijay Sidhwani, D.O., reviewed the medical records and concluded that the Cervical Paravertebral Facet Joint Block under Fluoroscopic Guidance and Lumbar Paraspinal Trigger Point Injection cervical branch block injections performed on 5/29/19 were not medically necessary. He indicated that the medical records do not reveal clear or consistent evidence of facet mediated pain. He asserted that normally, the standard of care for treatment of a cervical sprain/strain superimposed upon herniated and bulging discs due to spondylosis typically includes a course of conservative care in the range of 6 to 12 weeks. This period should involve an exercise-based physical therapy program which may include active range of motion, Active assist range of motion, if necessary, and even passive range of motion. Strengthening of intrinsic musculature surrounding the cervical spine also helps to stabilize spinal elements and decrease further irritation resulting in displacement and subsequent nerve root impingement as well as reducing facet inflammation. However, in this case, other than physical therapy sessions that address the claimant's cervical spine, treatment was limited to chiropractic adjustments and acupuncture. He opined that nonsteroidal anti-inflammatory medications are known to be extremely beneficial for symptoms of this nature resulting in facet arthropathy and NSAIDs are recommended to be tried during the acute and subacute phases of treatment along with an exercise-based treatment prior to considering any more invasive treatment. Furthermore, there should be clear clinical evidence of facet arthropathy that has not responded to adequate treatment prior to considering facet injections or ablation. He posited that there was no clear clinical evidence that would warrant this procedure

nor is there any evidence that the condition being treated is related to the sprain/strain injury sustained as facet arthropathy is typically degenerative in nature.

In response to Dr. Sidhwani's report, Kristappa Sangavaram, M.D., issued a rebuttal report dated 7/19/21. Dr. Sangavaram, maintained that the Cervical Paravertebral Facet Joint Block under Fluoroscopic Guidance and Lumbar Paraspinal Trigger Point Injection performed herein were medically necessary. She indicated that, contrary to Dr. Sidhwani's opinion, the Assignor exhibited signs of facet mediated pain.

Dr. Sangavaram indicated that the reason for performing the injections was two-fold. First, the injections were needed to reduce cervical pain due to inflammation of the facet joints. Secondly, they were performed to confirm that the pain was emanating from the facet joints since the injection can also locate the exact facet joint that is transmitting pain signals.

According to Dr. Sangavaram, the medical records clearly established that assignor had chronic neck and low back pain accompanied by muscle spasms, tenderness, and decreased range of motion, which failed to resolve with conservative treatments and series of epidural steroid injections. The facet joint block was recommended and performed in her case to treat, diagnose, and confirm if the pain of the patient was emanating from the facet joint. Medial branch block injection is performed both diagnostically and therapeutically and is recommended by medical treatment guidelines for patients with pain suspected to be largely facet in origin based on exam findings and who have completed a documented course of conservative management-such as this case.

Respondent submitted an addendum to the peer authored by Dr. Sidhwani. His opinion remained unchanged. Specifically, he stated that , "since Dr. Sangavaram has failed to provide any additional clinical evidence or medical based evidence relevant to this particular case and given the lack of medical based evidence to support the efficacy of this procedure, I find that the cervical facet injections as well as the accompanying trigger point injections and lab testing, conducted on 05/29/2019 were not medically necessary for these reasons as well as the reasons noted below and in my prior report 09/20/2019."

It was Dr. Sidhwani's opinion that the cervical facet injections, trigger point injections and lab testing, conducted on 05/29/19, was not medically necessary as he found no clinical evidence to support a need for this procedure with regard to the sprain/strain injury sustained by assignor. He again pointed out that assignor's injury was noted to have been resolved by several examiners, several months prior to the performance of this procedure. He cited again to a pain management evaluation report, submitted by Dr. Douglas Allen, indicating that there was no evidence of facet pain or any clinical findings to suggest that such injections, for diagnostic or therapeutic purposes, were indicated.

Applicant has established a prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; *Mary Immaculate Hosp. v. Allstate Ins. Co.* 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Damadian MRI in Canarsie, P.C. v. General Assurance Company*, 2006 NYSlip

Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006 Appellate Term, 2d Department); Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc. 3d 128, 784 N.Y.S. 2d 918 (2003).

Once Applicant establishes a prima facie case of medical necessity, the burden then shifts to Respondent. Respondent must then produce a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. Healing Hands Chiropractic P.C. v. National Assurance Co., 5 Misc. 3d 975; Citywide Social Work, et. al. v. Travelers Indemnity Co., 3 Misc. 3d 608.

A report relied upon by an insurer to defend its denial for No-Fault benefits must demonstrate that the services rendered were not in agreement with generally accepted medical/professional practice. Jacob Nir, M.D. Assignee of Josaphat Etienne v. Allstate Insurance Co., 796 N.Y.S2 857. "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Citywide Social Work & Psy. Serv. P.L.L.C.v. Travelers Indemnity Co., 3 Misc. 3d. 608, 777 N.Y.S. 2d 241, 2004 NY Slip Op 20034 NY Slip Op 24034 [Civ. Ct. Kings County 2004].

I find that Dr. Sidhwani's report sets forth a sufficient factual basis and medical rationale to support his opinion that the services rendered on 5/29/19 were not medically necessary. Therefore, Respondent has successfully rebutted Applicant's prima facie case of medical necessity. See, Exclusive Med. Supply, Inc. v Mercury Ins. Group, 2009 52273 (U) (Appellant Term 2d Dept., Nov. 5, 2009); Delta Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co., 2008 Slip Op 52450 (U), 21 Misc. 3d 142 (A) (App Term 2d Dept., 2008).

The burden now shifts back to Applicant to counter Dr. Sidhwani's report and demonstrate the necessity of the services at issue. CPT Med Services, P.C. v. New YorkCent. Mut. Fire Ins. Co., 2007 New York Slip Op 27526, 18 Misc. 3d 87 (App Term 1st Dept.); Eden Med., P.C. v. Progressive Cas. Ins. Co., 2008 NY Slip Op 51098 (U), 19 Misc.3d 143 (A) (App Term 2nd & 11th Jud Dists., 2008); Bath Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 2008 NY Slip Op 50347 (U) (App Term 2d Dept., Feb. 26, 2008; Khodadadi Radiology v. New York Central, 16 Misc. 3d 131 (A) (2007).

After carefully reviewing the evidence presented, find that the evidence supports a finding in favor of Applicant. Dr. Sangavaram,'s report established the medical necessity of the services at issue. She explained that the Assignor's symptoms were suggestive of cervical facet joint pain. The injections were needed to reduce the pain due to inflammation of the facet joints and to confirm that the exact location of the facet joint that was transmitting the pain.

Accordingly, I find that the facility fee associated with the performance of the Cervical Paravertebral Facet Joint Block under Fluoroscopic Guidance and Lumbar Paraspinal Trigger Point Injections performed on 5/29/19, was medically necessary.

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 | 05/29/19 - 05/29/19 | \$5,334.10 | \$1,778.22 | Awarded: \$1,778.22 |
| Total | | | \$5,334.10 | | Awarded: \$1,778.22 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/08/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is timely denied, interest shall begin to accrue as of the date the adjudication is commenced by the claimant, to wit: the date the application document was received by the American Arbitration Association, unless arbitration is commenced within 30 days as of the date the denial is received by the claimant. 11 NYCRR 65-3.9c. LMK Psychological Services P.C. v. State Farm Mut. Auto Ins. Co., 12 NY3d 217, 879 NYS2d 14 (2009). The end date for the calculation of the period of interest shall be the date of payment of the claim. In calculation

the interest, the date of accrual shall be excluded from the calculation. Accordingly, at bar, unless specifically noted in the body of this award, the date the application document was received by AAA, shall be utilized as the date of accrual for the purpose of calculating interest. Where applicable, if noted within the body of this award, said date of accrual of interest shall be controlling.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicants an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6 (as existing on the filing date of this arbitration), 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, Stacey Charkey, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/22/2021
(Dated)

Stacey Charkey

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:
2e01afad1ef6c8c39954d39d212eaa06

Electronically Signed

Your name: Stacey Charkey
Signed on: 09/22/2021