

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brownsville Chiropractic PC  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-19-1145-1888

Applicant's File No. 128.479

Insurer's Claim File No. 0509104220

NAIC No. 19232

**ARBITRATION AWARD**

I, Ellen Weisman, 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: Patient

1. Hearing(s) held on 11/01/2021  
Declared closed by the arbitrator on 11/01/2021

Vincent Ku, Esq. from Tsirelman Law Firm, P.L.L.C. participated in person for the Applicant

David Kelly, Esq. from Law Offices of James F. Sullivan, P.C. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,455.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing, Applicant's counsel reduced the total amount claimed to \$1,589.21 to reflect the proper rate of reimbursement for a chiropractor. The Demand for Arbitration is amended accordingly.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Respondent issued a timely denial.

3. Summary of Issues in Dispute

This arbitration stems from treatment of a 59-year-old male driver, "NO," who sustained injuries in a motor vehicle accident on July 10, 2018. The issues are whether Trigger Points Impedance Imaging ("TPII") and Localized Intensive Neuro-stimulation Treatment ("LINT") on October 12, 2018, was medically necessary; and if so, whether Applicant's bill is in accordance with the New York Workers' Compensation Medical Fee Schedule ("fee schedule"). The defense is premised on a Peer Review Report of Robert Snitkoff, D.C.

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

This hearing was conducted virtually on the Zoom platform. The defense of lack of medical necessity for TPII and LINT is premised on a Peer Review Report of Dr. Snitkoff dated November 14, 2018. Applicant submitted Rebuttal Reports of Lorena Villalobos, C.P.C. dated December 20, 2018, and of John P. Bucci, D.C., the treating doctor, dated April 15, 2021. Respondent also submitted an Affidavit of Jeffrey Futoran, C.P.C. sworn on October 17, 2021, with regard to its fee schedule defense. All submissions will be considered.

##### **Applicant's Medical Records:**

An Initial Examination Report of Dr. Bucci dated July 20, 2018, reflects that the patient had multiple complaints including neck, mid-back, low back, and right shoulder pain. Examination of the thoracolumbar spine revealed decreased range of motion, positive straight leg raise testing, spasm, and trigger points. The neurological examination revealed full strength, diminished reflexes, and normal sensation. The diagnoses included cervical, thoracic, and lumbar segmental dysfunction and sprained ligaments. Spinal MRI studies were recommended, along with upper and lower extremity EMG/NCV testing, and chiropractic care.

Re-Examination Reports of Dr. Bucci dated August 21, 2018 and September 24, 2018, reflect that the patient complained of continued neck and back pain. The report dated September 24, 2018, reflects that he had undergone cervical, thoracic, and lumbar spine MRI studies which were positive for disc pathology. At those visits, examination of the thoracolumbar spine revealed decreased range of motion, spasm, and trigger points. The neurological exams were unchanged from the previous visits. Continued chiropractic care was recommended. Chiropractic treatment notes confirm that chiropractic care was rendered to the patient to treat vertebral subluxation complex of the cervical, thoracic, and lumbar spine, along with myospasm, trigger points, and tenderness. TPII and LINT reports reflect that these procedures were performed by Dr. Bucci on August 30, 2018, September 10, 2018, September 14, 2018, September 28, 2018, October 3, 2018, and October 12, 2018.

An Initial Consultation Report dated August 3, 2018, and a Follow-Up Examination Report dated October 3, 2018, of Yana Abeyev, D.O. reflect that the patient had multiple complaints including neck, middle back, low back, and bilateral shoulder pain. At the initial visit, his complaint of lower back pain was radiating to his lower extremity. Physical examination of the lumbosacral spine revealed decreased range of motion, positive straight leg raise testing, tenderness, increased tone, and a mildly antalgic gait. The diagnostic impressions concerning the spine included cervical, thoracic, and lumbar sprains/strains. He was advised to undergo joint MRI studies, physical therapy, diagnostic testing, and an orthopedic evaluation.

A TPII and LINT report dated October 12, 2018, reflects that Dr. Bucci performed these procedures due to lumbar spine pain and myofascial pain syndrome. TPII was indicated to confirm the diagnosis of myofascial pain syndrome, and to identify and localize clinically relevant myofascial trigger points precisely and objectively. There are four types of trigger points including active, latent, secondary, and satellite. Latent ones are more common than active ones and are more difficult to identify. Manual clinical techniques do not allow objective identification of trigger points as they are extremely small in size (equivalent to the size of nerve endings) which prevents them from being identified on physical examination or using another modality. TPII identified 10 clinically relevant treatment points which were mapped. The diagnoses were consistent with lumbar disc displacement, subluxation complex, and myofascial pain syndrome. LINT was performed to treat these trigger points.

**Respondent's Peer Review Report:**

Dr. Snitkoff concluded that TPII and LINT were not medically necessary. He stated that the standard of care for treating trigger points was not followed in this case. The standard of care includes acupuncture, manual medicine techniques, massage, acupressure, therapeutic ultrasound, application of heat/ice, diathermy, transcutaneous electrical nerve stimulation, along with dry needling and trigger point injections. There was no need for TPII since trigger points are easily located through manual palpation. Also, treatment with intensive neuro-stimulation is neither medically necessary nor cost-effective. "[I]t would make no sense to perform this procedure to treat the patient's trigger points." There was no evidence of serious injury, and these procedures are not within the standard of care. The patient was suffering from chronic back pain and had undergone several weeks of treatment. He would benefit from non-pharmacologic treatment of trigger points utilizing "simple pressure" to reduce the irritation from pain.

**Applicant's Rebuttal Report:**

Dr. Bucci disagreed with the peer doctor and concluded that TPII and LINT were medically necessary. The patient complained of low back pain at each visit and had positive examination findings. He was diagnosed with lumbar segmental dysfunction

and ligament sprain for which chiropractic treatment, MRI testing, EMG/NCV testing, LINT, as well as specialty consultations in orthopedics, neurology, pain management were advised. Chiropractic progress notes from July 20, 2018 through October 3, 2018, document the presence of low back pain as well as spasms, tenderness, trigger points, and subluxations which were treated with chiropractic therapy including traction and myofascial release.

TPII was indicated due to the patient's complaints of persistent lumbar spine pain following this accident. TPII would confirm the diagnosis of lumbar myofascial pain syndrome and precisely and objectively identify and localize clinically relevant myofascial trigger points, 10 of which were identified. LINT was necessary to provide intensive neuro-stimulation of those trigger points. These procedures offer better patient compliance utilizing a non-invasive modality. He explained that skin overlying an active trigger point has decreased impedance, which can be analyzed and displayed by the machine. Pain which originates from these trigger points can be alleviated using hyper-stimulation analgesia which can be applied for pain reduction over a very small area by stimulating trigger points electrically. LINT also allows endorphin release without side effects, and with immediate and effective relief, allowing for a better recovery.

He stated further that this treatment has been effectively proven in clinical trials and is FDA approved. He addressed the concerns raised by the peer doctor and stated that the peer doctor ignored the fact that the patient's painful condition had not resolved despite having undergone treatment including myofascial release and similar interventions. Therefore, additional modalities and interventions were indicated including LINT. There are no specific guidelines delineating an absolute structure path for treatment to be universally prescribed to all patients. He stated further that deference should be afforded to the treating healthcare provider.

Applicant also submitted an Affidavit of Ms. Lorena Villalobos, C.P.C., dated December 20, 2018, in which she explained that the use of By-Report procedure codes must be justified by a report which includes the nature, need, time, skill, and equipment necessary to perform the procedure being billed, and that Applicant has submitted the required information. She described the four types of trigger points and indicated that objective identification of these trigger points is not possible by utilizing clinical techniques due to their extremely small size. She explained further how the equipment utilized provides computerized analysis which allows precise identification and localization of active and clinically relevant trigger points. She referred to TPII as a physiological MRI and stated that the fee schedule does not provide an analogous relative value units ("RVU"). She also stated that trigger points are a leading cause of back pain which must be identified and effectively treated to resolve the patient's symptoms. She confirmed that based on the application of the appropriate RVU of 37.71 (which includes anesthesia at 15.91 + treatment at 21.80), a chiropractor can bill \$1,598.21 for these procedures).

**Arguments of Counsel:**

Respondent's counsel argued that as confirmed by the peer doctor, TPII and LINT were not medically necessary as trigger points can be palpated manually. He argued that the thorough and credible Peer Review Report suffices to sustain the defense. Applicant's counsel countered that using this instrumentation allows for much greater precision in the detection and treatment of trigger points. He argued that the thorough and credible Rebuttal Reports suffice to refute the Peer Review Report and justify TPII and LINT.

**Findings:**

Applicant has established its *prima facie* entitlement to reimbursement for TPII and LINT based on submission of a properly completed claim form setting forth the amounts of the losses sustained and establishing that No-Fault payment is overdue. The denial is found to be sufficient as a matter of law. Therefore, Applicant's burden is also established by submission of sufficient medical records. *Ave. T MPC Corp. v. Auto One Ins. Co.*, 32 Misc.3d 128(A) 934 N.Y.S.2d 32 (Table), 2011 N.Y. Slip Op. 41292(U), 2011 WL2712964 (App. Term 2d, 11th & 13th Dists., 7/5/2011); *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 782, 774 N.Y.S.2d 564 (2d Dept., 2004), *Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co.*, 2005-1328 K C., 2006 N.Y. Slip Op. 51047(U), June 2, 2006.

The burden then shifts to Respondent to establish lack of medical necessity for TPII and LINT which warrants competent, expert proof in admissible form. *Citywide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc.3d 608, 777 N.Y.S. 2d 241, 2004 N.Y. Slip Op. 24034 (Civ. Ct., Kings Co., 2004), *aff'd.*, 8 Misc. 3d 1025 (2005). I find that Respondent's Peer Review Report is sufficient to meet its burden of proof on its affirmative defense of lack of medical necessity and to rebut Applicant's *prima facie* evidence.

Thereafter, the burden shifts back to Applicant to present competent medical proof as to the medical necessity for TPII and LINT by a preponderance of the credible evidence. *West Tremont Medical Diagnostic, P.C. v. GEICO*, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U), 2006 WL 2829826 (App. Term 2d & 11<sup>th</sup> Jud. Dists. 9/29/06), *A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company*, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11<sup>th</sup> Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant ( *See*, Insurance Law Section 5102).

I find further that this burden has not been met by Applicant's medical records, the Affidavit of Dr. Bucci, the Affidavit of Ms. Villalobos, or the evidence collectively.

Rather, I am convinced by the thorough and credible Peer Review Report of Dr. Snitkoff and the totality of the evidence that TPII and LINT procedures were neither medically necessary nor effective in treating this patient. He was undergoing standard conservative treatment modalities which are found to have been sufficient to treat his mild to moderate soft tissue spinal injuries.

I am not convinced that it was necessary to measure trigger points with precision using the TPII instrumentality as there is no indication of any diagnostic or therapeutic benefit it afforded to this patient. There is no information as to how the results of the TPII were incorporated into his treatment plan other than the generic statement that it would permit focused care using hyper-stimulation with LINT. Dr. Snitkoff identified multiple procedures which are within the standard of care to treat manually palpated trigger points. I am also not persuaded that LINT provided any therapeutic benefit beyond that which is provided by standard manipulative therapy.

This finding is supported by the fact that the information provided by Dr. Bucci about TPII and LINT is found to be entirely generic in nature and lacks credibility. Therefore, it fails to sustain Applicant's burden or to refute the Peer Review Report. This finding is also supported by the fact that I am convinced that Dr. Bucci could have manually palpated trigger points during his examinations of this patient and directed chiropractic manipulation therapy to those areas without these tests or treatments. This finding is supported by the fact that Dr. Bucci failed to explain why these procedures were necessary so often.

I also find that Applicant's reliance on the Affidavit of Ms. Lorena Villalobos, C.P.C. dated December 20, 2018, is misguided to the extent that she addressed the nature of, and necessity for these procedures as she is not a qualified medical expert. Therefore, the weight and probative value of her Affidavit is diminished. Thus, based on the totality of the evidence, I find that the Peer Review Report suffices to sustain the defense.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of Respondent and deny this claim in its entirety with prejudice.

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 claim is DENIED in its entirety

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

11/04/2021

(Dated)

Ellen Weisman

### **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:**  
7bcf839c3ae9834c84bccf2c9eb8a129

### **Electronically Signed**

Your name: Ellen Weisman  
Signed on: 11/04/2021