

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Multi-Specialty Pain Management PC
(Applicant)

- and -

Unitrin Safeguard Insurance Company
(Respondent)

AAA Case No. 17-22-1267-0790

Applicant's File No. 2850166

Insurer's Claim File No. 22123709316

NAIC No. 40703

ARBITRATION AWARD

I, Pamela Hirschhorn, 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: Injured Person

1. Hearing(s) held on 05/26/2023
Declared closed by the arbitrator on 05/26/2023

Jennifer Howard, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Arthur DeMartini, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,157.27**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

See, the within award.

3. Summary of Issues in Dispute

The injured person was a 32-year-old female who was involved in the subject motor vehicle accident of May 11, 2022. The claim is for services performed June 20, 2022 and July 18, 2022. The issue is whether the peer review reports established prima facie that the services rendered were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

The injured person was a 32-year-old female who was involved in the subject motor vehicle accident of May 11, 2022. The claim is for services performed June 20, 2022, through July 18, 2022.

The parties stipulated that the claim was timely denied based upon the peer review reports of Christopher Burrei, D.O., dated August 19, 2022, and August 31, 2022.

The peer review report of Christopher Burrei, D.O., dated August 19, 2022, addressed whether an evaluation and trigger point injections provided on June 20, 2022, were medically necessary. The peer review doctor noted that at the time of an examination by Dr. Yusupov on May 20, 2022, injuries were reported to the neck, mid and low back region. Following the examination performed, the treatment plan included continued chiropractic treatment. Nerve blocks were performed by Dr. Yusupov in the occipital region.

The peer review doctor noted that an examination was performed by Dr. Haftel on June 20, 2022. At that time, the injured person was complaining of ongoing neck and back pain. Physical therapy and chiropractic care were ongoing two to three times per week. Physical examination noted tenderness in the cervical spine with multiple trigger points. The lumbar exam revealed tenderness at L4-5. There was decreased range of motion. No trigger points were noted by Dr. Haftel. The plan was to schedule cervical trigger point injections and perform lumbar trigger point injections on that date. The peer review doctor found that the ultrasound guided trigger point injections performed on June 20, 2022, were not medically necessary.

The peer review doctor also found that there was no indication for ultrasound guidance to be performed for trigger point injections as a trigger point is a palpatory finding. The peer review doctor stated that Dr. Haftel failed to document palpatory trigger points in the lumbar spine on examination.

The peer review doctor stated that there was no evidence that the injured person was not tolerating treatment. The peer review doctor advised that in general, trigger points are utilized to allow for pain control for more aggressive physical therapy which was not necessary in this instance.

In the peer review report dated August 31, 2022, Dr. Burrei addressed the medical necessity of a reevaluation, and trigger point injection services provided on July 18, 2022.

The peer review doctor noted that at the time of evaluation by Dr. Yusupov on May 20, 2022, it was noted she had already initiated chiropractic care as well as physical therapy. Nerve blocks were performed by Dr. Yusupov at that time.

The injured person was seen by Dr. Haftel's physician assistant on June 20, 2022. Trigger point injections were performed on that date, which the peer review doctor stated were not medically necessary.

The peer review doctor noted that on July 18, 2022, the injured person was again examined by Dr. Haftel's physician assistant. It was noted there was fair alleviation of pain and less stiffness from the prior injections, although no documented functional improvement or significant documentation of pain levels was noted by the practitioner. It was noted she was still attending physical therapy. The peer review doctor noted that a positive straight leg raise and tenderness to palpation and radiculopathy was noted upon examination of the lumbar spine.

The peer review doctor concluded that the ultrasound guided trigger point injections performed on July 18, 2022, were not medically necessary.

The peer review doctor stated that there was no documented significant functional improvement nor was there documented significant pain control as related to the prior injections. The peer review doctor also stated that it is unclear how this would be evaluated as the injured person was also receiving nerve block injections from a different physician.

The peer review doctor stated that the diagnosis of lumbar radiculopathy is not a diagnosis utilized for trigger point therapy.

Thus, the peer review doctor concluded that the medical necessity cannot be established for the ultrasound guided trigger point injections, and related medications and supplies, performed on July 18, 2022.

Since the peer review doctor set forth a medical rationale for the claim's rejection, this arbitrator finds that the peer reviews established prima facie that the services at issue were not medically necessary. The burden then shifted to applicant to demonstrate by a preponderance of the credible evidence that the services were medically necessary.

Applicant submitted a rebuttal by Brian S. Haftel, M.D.

Dr. Haftel stated that pursuant to the June 20, 2022, injection report, the presence of palpable trigger points in the muscles that were injected were documented.

Dr. Haftel stated that trigger point injections are efficacious in the treatment of myofascial pain.

Dr. Haftel stated that there was no indication in either injection report that these injections were performed to address a diagnosis of lumbar radiculopathy.

Dr. Haftel stated that the peer review doctor minimized ultrasound guidance's benefits when used in conjunction with trigger point injections, which include direct visualization of the target of interest, real-time needle guidance, visualization of the spread of local anesthetics and thus minimal risk of complications.

Dr. Haftel stated that the use of ultrasound guidance may increase the efficacy of trigger point injections to reduce or relieve myofascial pain while reducing the possibility of complications.

Dr. Haftel stated that in his July 18, 2022, examination report, he noted that the prior injections produced pain relief and reduced stiffness.

This arbitrator has considered the evidence and finds that the applicant demonstrated by a preponderance of the credible evidence that the services performed were medically necessary. This arbitrator notes that Dr. Haftel, in his rebuttal, addressed the peer review doctor's concerns with specificity and set forth how the injured person benefited from the treatment rendered. Accordingly, the applicant is awarded reimbursement for the within services. Attorney's fees shall be calculated pursuant to 11 NYCRR 65-4.6 (d). Interest shall be calculated from September 20, 2022, which is the AR1 filing date. See, 11 NYCRR 65-3.9 (c).

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
	Multi-Specialty Pain Management PC	06/20/22 - 06/20/22	\$625.02	Awarded: \$625.02
	Multi-Specialty Pain Management PC	07/18/22 - 07/18/22	\$532.25	Awarded: \$532.25
Total			\$1,157.27	Awarded: \$1,157.27

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/20/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

See, the within award.

C. Attorney's Fees

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

See, the within award.

- 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 NY

SS :

County of Nassau

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

05/29/2023
(Dated)

Pamela Hirschhorn

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:
bd2fc616828ff037261eb491745c9447

Electronically Signed

Your name: Pamela Hirschhorn
Signed on: 05/29/2023