American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Integrated Specialty ASC LLC f/k/a Health Plus Surgery Center, LLC (Applicant)	AAA Case No.	17-22-1257-3923
	Applicant's File No.	RFA22-308465
- and -	Insurer's Claim File No.	0572568475 2BE
	NAIC No.	17230
Allstate Property and Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Nancy Kramer Avalone, 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 ME

1. Hearing(s) held on 10/23/2023
   Declared closed by the arbitrator on 10/23/2023

   Helen Feingersh, Esq. from The Russell Friedman Law Group LLP participated virtually for the Applicant

   Juliya Khodik, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$5,886.20**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The amount claimed in the Arbitration Request was amended down to $1694.92, in accordance with the applicable fee schedule .

3. Summary of Issues in Dispute

   The instant matter arose out of a motor vehicle accident that occurred on Dec. 22,2019, involving Assignor ME, a 71-year old female, as a restrained driver. She was

transported to NY Presbyterian Hospital where she was evaluated, treated and discharged. Applicant is an ambulatory surgery center seeking a facility fee associated with a lumbar epidural steroid injection and other injections provided to Assignor ME on Sept. 1, 2021. Respondent denied the claim based on the peer review of Jason Cohen, MD, Board Certified in Anesthesiology and Pain Medicine. Applicant submitted a rebuttal by Conrad Cean, MD. Dr. Cohen drafted an addendum.

Respondent also preserved a fee schedule defense and submitted a fee analysis by Jeffey Futoran, CPC.

The issues presented are whether the injections were medically necessary, and if so, the proper reimbursement pursuant to the NYS Workers' Compensation Medical Fee Schedule ("fee schedule").

There were no issues raised with respect to the submission of the claim or issuance of the denial of claim form. After reviewing the records, including the bill and the denial of claim form, I find that Applicant established its *prima facie* case of entitlement to No-Fault compensation, and Respondent issued a timely denial of claim form preserving all defenses contained therein.

4. Findings, Conclusions, and Basis Therefor

The instant matter was decided based upon the submissions of the parties as contained in the electronic file ("E-file") maintained by the American Arbitration Association (MODRIA), and the oral arguments of the parties' representatives. The hearing was held via a web-based video conferencing platform (ZOOM). I have reviewed the documents contained in the E-file, heard the arguments of the parties, and make my decision in reliance thereon.

Pursuant to 11 NYCRR §65-4.5(o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

An Applicant establishes its prima facie entitlement to reimbursement by proof that it submitted its claim, setting forth the fact and amounts of the losses sustained, and that payment of no-fault benefits was overdue. Insurance Law § 5106(a); *Mary Immaculate Hosp. v. Allstate Ins. Co.,* 5 A.D.3d 742, 774 N.Y.S.2d 564 (App. Div. 2004); *Viviane Etienne Med. Care v. Country-Wide Ins. Co.,* 2015 NY Slip Op 04787, 25 N.Y.3d 498, 14 N.Y.S.3d 283, 35 N.E.3d 451 (2015). After reviewing the records, including the bill and the denial of claim form, I find that Applicant established its prima facie case of entitlement to No-Fault compensation.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursable for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

Medical Necessity Issue.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. (*AJS Chiropractic, P.C. v Travelers Ins. Co.*, 25 Misc 3d 140[A], 2009 NY Slip Op 52446[U] [App Term 2009]).

The Respondent must, at a minimum, establish a detailed factual basis and a sufficient medical rationale for its asserted lack of medical necessity. (*Delta Diagnostic Radiology, P.C. v Progressive Cas. Ins. Co.*, 21 Misc 3d 142[A], 2008 NY Slip Op 52450[U] [App Term 2008]).

Additionally, it must be proven that said rationale is supported by evidence of the generally accepted medical/professional practices. (*Nir v Allstate Ins. Co.*, 7 Misc 3d 544 [Civ Ct, Kings County 2005]).

When the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant/provider which must then present its own evidence of medical necessity. (*See generally, W. Tremont Med. Diagnostic, P.C. v Geico Ins. Co.*, 13 Misc 3d 131[A], 2006 NY Slip Op 51871[U] [App Term 2006]).

Where the denial is predicated upon a peer review report, and the peer review report establishes prima facie, that there was no medical necessity for the services performed, the provider must refute the peer review doctor's determination. (*See A Khodadadi Radiology, P.C. v NY Cent. Mut. Fire Ins. Co.*, 16 Misc 3d 131[A], 2007 NY Slip Op 51342[U] [App Term 2007]).

Similarly, where the insurer denies the claim based upon an Independent Medical Examination (IME) of the Assignor, and the IME establishes *prima facie* that there was no medical necessity for continued treatment, the Applicant/provider bears the burden of demonstrating that the treatment at issue was medically necessary by a preponderance of the credible evidence. (*See Amato v State Farm Ins. Co.*, 40 Misc 3d 129[A], 2013 NY Slip Op 51113[U] [App Term 2013])

In support of the lack of medical necessity defense, the Respondent relied upon the peer review report of Dr. Cohen, dated Nov. 5, 2021, in which the doctor concluded that the services were not medically necessary. The peer review was one of the most thorough and well written reports that I have reviewed in my 18 years of experience practicing in the realm of NY No-Fault law. Dr. Cohen provided a detailed post-accident history of clinical findings and treatment, summarized below.

MRI testing of the lumbar spine performed on July 13, 2020 revealed scoliotic deformity within the lumbar spine. Right foraminal disc herniation L3-L4 superimposed upon more diffuse disc bulging with central spinal stenosis at this level. Left foraminal disc herniation diffuse disc bulging L4-5 with resultant central and lateral recess stenosis. Diffuse disc bulge L5-S1 with impression on the ventral epidural soft tissues. Multiple uterine fibroids.

EMG/NCV testing of the lower extremities performed on May 6, 2020 revealed evidence of bilateral L5 - S1 radiculopathy.

A clinical evaluation by Conrad F. Cean, M.D., on February 9, 2021, reported subjective complaints of neck, lower back and right shoulder pain. Lower back pain was rated as 9/10 and sharp. The musculoskeletal examination of lumbar spine is reported to show positive Kemp's test - pain with rotation at the waist, positive pain with facet loading, diffuse spasm and tenderness, facet tenderness with palpation, and sacroiliac joint tenderness. *Clinical impression was low back pain. The claimant was scheduled lumbar minimally invasive discectomy.*

On February 17, 2021, the claimant underwent microdiscectomy L3-4 and L4-5, nucleus pulposus ablation with bipolar probe, annuloplasty using bipolar probe, discography L3-4 and L4-5, interpretation of discography, multiplanar fluoroscopy, and transforaminal epidural injection L3-4 and L4-5 under anesthesia by Conrad F. Cean, M.D.

On February 17, 2021, the claimant underwent intraoperative neurophysiological monitoring testing for lumbar laminectomy and discectomy at L3/L4 and L4/L5 by Steven Urbaniak, D.O.

A clinical evaluation by Conrad F. Cean, M.D., on July 20, 2021, reported subjective complaints of neck, lower back and right shoulder pain. Lower back pain was rated as 9/10 and radiating, numbness and tingling of bilateral legs. Neck pain was rated as 7/10. The musculoskeletal examination of lumbar spine is reported to show paraspinal muscle spasm and tenderness, limited range of motion, facet tenderness with palpation, and positive Kemp's test - pain with rotation at the waist. Cervical spine examination revealed suboccipital pain, suboccipital spasm, bilateral trapezius pain, bilateral trapezius spasm, limited range of motion, facet tenderness with palpation, and pain with extension. *Clinical impression was low back pain; cervicalgia. The claimant was recommended to continue physical therapy and chiropractic treatment, scheduled lumbar selective nerve root block, cervical intra-muscular injection and sacroiliac joint injection, and prescribed cold therapy treatment for lumbar spine paravertebral spasm.*

A clinical evaluation by Conrad F. Cean, M.D., on July 21, 2021, reported subjective complaints of neck, lower back and right shoulder pain. Lower back pain was rated as 9/10 and radiating, numbness and tingling of bilateral legs. Neck pain was rated as 7/10. The claimant was taking Amlodipine, Lisinopril, Diclofenac ointment, and Aspirin 81 mg. The musculoskeletal examination of lumbar spine is reported to show paraspinal muscle spasm and tenderness, facet tenderness with palpation and sacroiliac joint tenderness. Cervical spine examination not documented. *Clinical impression was low back pain; cervicalgia. The claimant was recommended to continue physical therapy and chiropractic treatment, scheduled lumbar selective nerve root block, cervical intra-muscular injection and sacroiliac joint injection, and prescribed cold therapy treatment for lumbar spine paravertebral spasm.*

On July 21, 2021, the claimant underwent bilateral lumbar selective nerve root block at L3-4, L4-5 and L5-S1 levels under fluoroscopy by Conrad F. Cean, M.D.

On July 21, 2021, the claimant underwent intra-muscular injection to cervical paraspinal under ultrasound guidance by Conrad F. Cean, M.D.

On July 21, 2021, the claimant underwent bilateral sacroiliac joint injection under fluoroscopy by Conrad F. Cean, M.D.

On July 28, 2021, the claimant underwent bilateral lumbar selective nerve root block at L3-4, L4-5 and L5-S1 levels under fluoroscopy by Conrad F. Cean, M.D.

On July 28, 2021, the claimant underwent intra-muscular injection to cervical paraspinal under ultrasound guidance by Conrad F. Cean, M.D.

On July 28, 2021, the claimant underwent bilateral sacroiliac joint injection under fluoroscopy by Conrad F. Cean, M.D.

A clinical evaluation by Conrad F. Cean, M.D., on August 23, 2021, reported subjective complaints of neck, lower back and right shoulder pain. Lower back pain was rated as 8/10 and radiating, numbness and tingling of bilateral legs. Neck pain was rated as 7/10. The remaining findings on July 21m 2021 with the exception that the Assignor was now taking Percocet 5-325 mg, and Cyclobenzaprine 10 mg. *The claimant was status post lumbar selective nerve root block and sacroiliac joint injection #1 and 2.* The remaining findings on July 21m 2021 with the exception that the Assignor was now taking Percocet 5-325 mg, and Cyclobenzaprine 10 mg.

Clinical impression was low back pain; cervicalgia. The claimant was recommended to continue physical therapy and chiropractic treatment and scheduled lumbar selective nerve root block and bilateral sacroiliac joint injection #3.

On September 1, 2021, the claimant underwent bilateral lumbar selective nerve root block at L3-4, L4-5 and L5-S1 levels under fluoroscopy and lumbar epidurography by Conrad F. Cean, M.D.

On September 1, 2021, the claimant underwent intra-muscular injection to suboccipital under ultrasound guidance by Conrad F. Cean, M.D.

On September 1, 2021, the claimant underwent bilateral sacroiliac joint injection under fluoroscopy by Conrad F. Cean, M.D.

Dr. Cohen explained the medical rationale for his conclusion that the services were not medically necessary as follows:

- "Epidural injections may be repeated only as medically necessary and with proof that: prior injection had a positive response by significantly decreasing pain; the patient continues to have ongoing pain or documented functional disability (6 on a scale of 0 to 10); AND The patient is actively engaged in other forms of conservative non-operative treatment (unless pain prevents the patient from participating in conservative therapy); AND Injections meet the following criteria: There must be at least 14 days between injections; No more than 3 procedures in a 12-week period of time per region; Limited to a maximum total of 6 procedures per region per 12 months. Course of treatment, three epidural injections, regardless of approach must provide at least o > 50% pain relief obtained for a minimum of 6 weeks to be considered a positive and effective response." (2014 NIA Standard Clinical Guidelines).

Interval office follow-up re-evaluation by Conrad F. Cean, M.D., does not document any relief by significantly decreasing pain status post prior lumbar selective nerve root block performed on July 21, 2021 and July 28, 2021. However, there remains an identical and unchanged examination.

MRI testing of the lumbar spine performed on July 13, 2020 fails to indicate that there are lumbar disc protrusions that appear contributory and consistent with the claimant's symptomatology, therefore the standard of care for performing the lumbar selective nerve root block and all associated services performed on September 1, 2021 has not been met.

· MRI testing of the lumbar spine performed on July 13, 2020 revealed "scoliotic deformity within the lumbar spine. Right foraminal disc herniation L3-L4 superimposed upon more diffuse disc bulging with central spinal stenosis at this level. Left foraminal disc herniation diffuse disc bulging L4-5 with resultant central and lateral recess stenosis. Diffuse disc bulge L5-S1 with impression on the ventral epidural soft tissues. Multiple uterine fibroids.", and EMG/NCV testing of the lower extremities performed on May 6, 2020 revealed "evidence of bilateral L5 - S1 radiculopathy."

  Conrad F. Cean, M.D., documents subjective complaints of lumbar spine pain with radiation to bilateral leg area quite distinct from a Sacroiliac mediated pattern of pain into the groin and/or lateral thigh without neurologic symptoms. Moreover, his exam supports only a lumbar etiology of pain, not a SI mechanism." Finally, complaints including numbness and tingling are characteristic of lumbar disc pathology, not sacroiliac joint. Also, provocative SI joint tests are non-specific with concurrent disc pathology.

· Dr. Cohen finds trigger point injections can be beneficial, however, he opined that trigger point injections do not require ultrasound guidance. Any physician can palpate a trigger point and inject the medication into the trigger point without ultrasound guidance. *"Trigger points are discrete, focal, hyperirritable spots* located in a taut band of skeletal muscle. They produce pain locally and in a referred pattern and often accompany chronic musculoskeletal disorders. Acute trauma or repetitive microtrauma may lead to the development of stress on muscle fibers and the formation of trigger points. Palpation of a hypersensitive bundle or nodule of muscle fiber of harder than normal consistency is the physical finding typically associated with a trigger point. Palpation of the trigger point will elicit pain directly over the affected area and/or cause radiation of pain toward a zone of reference and a local twitch response.

  He noted that there is/was no evidence on examination by Conrad F. Cean, M.D., of any active trigger points with reproductible twitch response or referred pain pattern on palpation of any identified trigger points.

  Dr. Cohen concluded as follows:

  In the event there are musculoskeletal complaints the standard of care would include physical therapy, pharmacotherapy, and appropriate imaging studies to rule out a surgical lesion. The accepted standard of practice has not been met to support the medical necessity for lumbar selective nerve root block, bilateral sacroiliac joint injection, suboccipital intramuscular injection, and all associated services performed by Conrad F. Cean, M.D., for the following reasons: exam does not demonstrate positive Straight leg raise test, any decreased deep tendon reflexes or neurological findings consistent with lumbar radiculopathy. There is limited evidence for therapeutic

intraarticular sacroiliac joint injections. There is no evidence on examination by Conrad F. Cean, M.D., of any active trigger points with reproductible twitch response or referred pain pattern on palpation of any identified trigger points.

I deem the peer review to be sufficiently credible and persuasive to establish lack of medical necessity for the services at issue. The Respondent has met the burden of proof with respect to the lack of medical necessity. Thus, the burden thus shifts to the Applicant to rebut the Respondent's evidence.

In opposition, Applicant relied on the medical documentation in the Record and the rebuttal report by Dr. Cean the treating physician, who disagreed with the peer review. On 07/21/2021 and 07/28/2021, he performed lumbar epidural steroid injection (LESI) at L3-L4, L4-L5 and L5-S1 levels bilaterally. He concluded that the diagnosis was lumbosacral radiculopathy. He stated that the operative report notes the indications for the LESI as "…After review of the patient's history, physical, neurological exam and imaging studies It was determined that the above procedure was indicated for therapeutic value…" On July 21, 2021 and July 28, 2021 he performed the bilateral sacroiliac joint injections. The operative report notes the indications for the SIJI as "… *After review of the patient's history, physical, neurological exam and imaging studies It was determined that the above procedure was indicated for therapeutic value…".*

Dr. Cean stated there was sufficient evidence to support the diagnosis of lumbar radiculopathy. Lumbar epidural injections have been used to treat radicular pain from herniated discs, spinal stenosis, chemical discs, and chronic neck pain of discogenic origin. Studies have shown lumbar epidural steroid injections presented positive results for both short and long-term relief. He cited medical authority. Regarding trigger point injections he stated that the goal of using trigger point injections is to relieve the pain and pressure. When performing epidural and trigger point injections simultaneously, there is a better chance in achieving maximum results.

Respondent submitted an addendum by Dr. Cohen dated Sept. 28, 2023. Dr. Cohen reviewed the rebuttal report. He remarked that in the rebuttal, Conrad F. Cean, M.D. fails to document any positive Straight leg raise test. In the rebuttal, Dr. Cean fails to document any decreased deep tendon reflexes or neurological findings consistent with lumbar radiculopathy and Dr. Cean fails to produce evidence from randomized controlled trials establishing efficacy of epidural steroid injections. He also noted that Dr. Cean fails to produce any evidence of SI joint inflammation on MRI testing of the lumbosacral spine. Thus, Dr. Cohen did not revise his conclusion that the services were not medically necessary.

After reviewing the medical documentation in the Record, I find that Dr. Cohen's discussions in the peer review and in the rebuttal are accurate and reliable. Dr. Cohen's major point was that the Assignor's clinical condition had not improved as a result of the prior injections. The rebuttal report did not sufficiently address this issue.

With respect to the trigger point injections, Dr. Cohen noted that the examination report did not document the finding of trigger points on palpation, however, Dr. Cean advised that trigger point injections are used when spasm is noted but no authority was provided by Dr. Cean to provide a medical rationale for his opinion.

Therefore, after reviewing the totality of the credible and admissible evidence and considering the arguments of the parties, I find that the Respondent established lack of medical necessity by a fair and credible preponderance of the evidence. The claim is denied. *This award is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.*

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 NY
SS :
County of Nassau

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

11/10/2023
(Dated)

Nancy Kramer Avalone

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:
9dcff28331732ba4abbe2dc0c6c4dbb6

Electronically Signed

Your name: Nancy Kramer Avalone
Signed on: 11/10/2023