

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

New York Central Mutual Fire Insurance
Company
(Respondent)

AAA Case No. 17-23-1324-6122

Applicant's File No. 44523-469007

Insurer's Claim File No. 20233002173

NAIC No. 14834

ARBITRATION AWARD

I, Theresa A. Kelly, 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, JP

1. Hearing(s) held on 06/13/2024
Declared closed by the arbitrator on 06/13/2024

Joaquin Lopez, Esq. from Barshay, Rizzo & Lopez, PLLC. participated virtually for the Applicant

Kristina O'Shea, Esq. from Gullo & Associates, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,467.47**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended its claim to \$1,673.49.

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

3. Summary of Issues in Dispute

Applicant is seeking as compensation \$1,673.49 which it billed for providing trigger point injections to the Assignor, JP, who was injured in a motor vehicle accident on 4/14/2023. Respondent denied payment of the bills at issue on the ground of lack of medical necessity based on a peer review of Dr. Woodley Desir.

The issue to determine is whether the services were medically necessary.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Assignor sustained multiple injuries, including neck pain, radiating into the left shoulder and lower back pain radiating into both limbs. Respondent denied payment for the injections and Applicant now seeks reimbursement.

Since the Respondent's denials for the bills were timely, it was within its rights to assert lack of medical necessity as a defense. Liberty Queens Medical, P.C. v. Liberty Mutual, 2002 WL 31108069 (App. Term 2d & 11th Dists. Insurance Co. June 27, 2002); cf. Country-Wide Insurance Co. v. Zablocki, 257 A.D.2d 506, 684 N.Y.S.2d 229 (1 Dept. 1999). When an insurer relies upon a peer review report to demonstrate that a particular service was not medically necessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. As per the holding in Jacob Nir, M.D. v. Allstate Insurance Co., 7 Misc.3d 544 (2005), the peer reviewer must establish a factual basis and medical rationale to support a finding that the services were not medically necessary, including setting forth generally accepted standards in the medical community. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y.Civ. Ct. Kings Co. 2004).

Medical Necessity -

Respondent relied upon peer reviews of Dr. Woodlely Desir dated 12/29/2023 to establish its defense of lack of medical necessity.

Dr. Desir opined that as a standard of care for the musculoskeletal pain trigger point injections are generally not recommended. Trigger point injections are recommended for trigger points that are palpable tender points that present as a referred pain. Chronic pain is not considered as an indication for the trigger point injection...Trigger point injections with ultrasonic guidance are not recommended for chronic pain. Therefore it is not considered as medically necessary. Standard of care for pain indicates trial of conservative care, including physical therapy, chiropractic care, NSAIDs, rest, and activity modification for 8-12 weeks. Further trigger point injections are considered for palpable trigger points that are not just pain points. Trigger points are defined as

palpable taut muscle bands that have referred pain, Physical therapy is a treatment of choice and standard of care for myofascial pain or trigger points. For this claimant, physical therapy only began on 04/18/23.

I find Dr. Desir met Respondent's burden of proof shifting the burden of persuasion to the Applicant to demonstrate medical necessity.

Applicant's evidence included the rebuttal affidavit of Dr. Viviane Etienne, MD. Dr. Etienne opined that injection of trigger points with a local anesthetic (with or without an added corticosteroid) is a relatively simple, cost-effective treatment that often produces an almost immediate decrease in pain. In addition, it can provide long-term pain relief and increased range of motion, thereby enabling patients to resume normal activities. TPI is used not only to treat myofascial pain syndromes, but also to treat a wide variety of pain syndromes and other painful conditions.

He cited to a study on "A prospective, randomized, double-blind evaluation of trigger-point injection therapy for low-back pain" by Garvey TA, Marks MR, Wiesel SW notes that: In 63 patients with low back strain, trigger point injection (either with or without local anesthetic and/or corticosteroid) provided symptomatic relief of low back pain. Trigger point injections (TPI) are currently used to treat a wide variety of pain syndromes and other painful conditions. A common application for TPI is treatment of myofascial pain syndrome, a chronic musculoskeletal pain condition in which painful trigger points develop within muscle and fascia, resulting in local and referred pain, restricted range of motion, and autonomic nervous system dysfunction. A number of studies suggest that TPIs may improve quality of life in patients who experience pain as a result of myofascial pain syndrome. TPI improves pain and range of motion. "...We obtained better results with TP injections than only a home exercise program and oral medications in patients with radiculopathy and TPs in the gluteal region."

I find that while Respondent met its burden of proof of lack of medical necessity, Applicant's rebuttal doctor was able to sufficiently refute the findings of the peer review and meet its burden of persuasion. Accordingly, I find in favor of Applicant and grant the claim in its amended amount.

This award is in full disposition of all No-Fault benefit claims submitted to 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Atlantic Medical & Diagnostic PC	04/25/23 - 04/25/23	\$2,467.47	\$1,673.49	Awarded: \$1,673.49
Total			\$2,467.47		Awarded: \$1,673.49

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/10/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co. 12.N.Y.3d 217 (2009).

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 the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a maximum fee of \$1,360. See, 11 NYCRR 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 NY

SS :

County of Suffolk

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

07/15/2024
(Dated)

Theresa A. Kelly

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:
6dbdcd53c5e5b64c261fae9f5dce5d3a

Electronically Signed

Your name: Theresa A. Kelly
Signed on: 07/15/2024