

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Atlantic Medical & Diagnostic PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No.	17-23-1324-6105
Applicant's File No.	445-PKT23-124047
Insurer's Claim File No.	9WINY12166
NAIC No.	29742

ARBITRATION AWARD

I, Glen Cacchioli, 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 09/10/2024
Declared closed by the arbitrator on 09/10/2024

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

Maureen Knodel, Esq. from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,953.74**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The Assignor is a 61-year-old female who was involved in a motor vehicle accident on December 15, 2022. Following the accident Assignor was treated at Applicant's PC. Applicant billed Respondent for the treatment in the amount of 1203.77 (amended amount). Respondent denied the claim based on the peer review of Dr. Weiss, who opined that the treatment was not medically necessary. Respondent also contends applicant billed in excess of the fee schedule with respect to ultrasound guidance. As such, the issues presented for this hearing are medical necessity and fee schedule.

4. Findings, Conclusions, and Basis Therefor

The hearing was conducted via Zoom and was decided on the documents contained in the ADR Center and the oral arguments of counsel/representative at the hearing. Only those arguments presented at the hearing are addressed in this decision and any other arguments not presented at the hearing are deemed waived. There were no witnesses

On December 15, 2022, Assignor was involved in a motor vehicle accident.

On December 20, 2022, Assignor presented to Brighton Rehab, PT due to complaints of right knee, neck, and low back pain. Examination of the cervical spine revealed pain. Examination of the lumbar spine revealed pain and decreased ranges of motion. Examination of the right knee revealed pain. Treatment plan included physical therapy, chiropractic treatment, and numerous items of durable medical equipment.

MRIs of the cervical, thoracic, and lumbar spine revealed cervical disc herniations with annular tear, lumbar disc bulge and annular tear, and thoracic disc bulge. MRI of the right knee revealed tendinosis.

On January 13, 2023, the following medications were issued: lidocaine ointment, cyclobenzaprine tablets and naproxen.

On January 24, 2023, Assignor was examined by Dr. Porteskaya for an initial neurological/PM&R consultation. Report noted neck pain radiating to the right along with numbness. Right biceps and right knee flexors were decreased otherwise reflexes were symmetric. Sensation was decreased in the bilateral C6 and C7 distribution and L5 and S1 distribution. Strength was 5-/5 for the right knee, right ankle, and both hips. Treatment plan included EMG/NCV studies of the upper and lower extremities. The tests were performed the same day, January 24, 2023.

On February 7, 2023, Assignor was examined by Dr. Soman. Treatment plan included continued physical therapy, and additional medication was ordered including lidocaine ointment, cyclobenzaprine, and naproxen.

On February 20, 2023, Assignor was examined by PA Abramov due to continuing complaints of neck, thoracic, and lower back pain. Examination revealed pain in the cervical and lumbar spine. Straight was for/5 throughout all four extremities and sensation was normal. Treatment options included trigger point injections, medial branch block injections, epidural injections, and surgery.

On February 27, 2023, a cervical traction unit was supplied to Assignor.

On March 8, 2023, Assignor was examined again by Dr. Soman. The following medications were prescribed: lidocaine 5% ointment, cyclobenzaprine 10mg tablet, and ibuprofen 800 mg tablet due to consistent and persistent complaints of pain.

On March 13, 2023, Assignor was examined by Dr. Kotkes due to complaints of neck pain. Examination revealed tenderness in the cervical spine and tenderness in the lumbar spine along with decreased strength in the upper extremities. Sensation was normal. Treatment plan included epidural injection, which was administered the same day, March 13, 2023,

On March 9, 2023, a percutaneous discectomy was performed.

On March 17, 2023, Assignor was dispensed lidocaine 5% ointment, cyclobenzaprine, and ibuprofen.

Subsequently, Assignor was evaluated by Dr. Etienne due to complaints of bilateral cervical and lumbar spine pain. Examination revealed decreased ranges of motion with pain, tenderness, trigger points, and positive straight leg raise test. Diagnosis included bulging lumbar disc and cervical intervertebral disc without myelopathy. Recommendations included continued physical therapy, chiropractic treatment, acupuncture treatment, medications, DME's, and trigger point injections.

On April 13, 2023, and May 11, 2023, Assignor underwent trigger point injections. Applicant billed respondent \$1203.77 for the injections with ultrasound guidance. Respondent denied reimbursement contending lack of medical necessity based on the peer reviews of Dr. Weiss. Respondent also contends that with respect to ultrasound guidance applicant billed in excess of the fee schedule. Therefore, the issues for determination are medical necessity and fee schedule.

MEDICAL NECESSITY

In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, *Provvedere, Inc. v. Republic*

Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 20140. Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co. 2009 NY Slip Op. 00351 (2d. Dep't, January 20, 2009), See also Channel Chiropractic PC v. Country Wide Ins. Co. 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Vladimir Zlatnick, M.D. v. Travelers Indem. Co. 2006 NY Slip Op. (50963U) (App. Term 1st Dep't, 2006).

When an insurer interposes a timely denial of claim that sets forth a sufficiently detailed factual basis and adequate medical rationale for a claim's rejection, the presumption of medical necessity attached to the applicant's properly completed claim is rebutted and the burden shifts back to the claimant to refute the peer review and prove the necessity of the disputed services. *Id.* See, e.g., CPT Med. Servs., P.C. v. New York Cent. Mut. Fire Ins. Co., 2007 NY 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 2d & 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) (since the provider failed to rebut peer review's showing of a lack of medical necessity, defendant was entitled to dismissal of complaint).

In order for an Applicant to prove that the disputed testing was medically necessary, it must demonstrate that "the treatment, procedure, or service (was) ordered by a qualified physician...based on an objectively reasonable belief that it will assist in the patient's diagnosis and treatment and cannot be reasonably dispensed with". *Nir v. Progressive Insurance*, NYLJ, April 14, 2005, p.19, col. 1 (Civ Ct Kings County, J. Nadelson). Moreover, "(s)uch treatment, procedure, or service must be warranted by the circumstances as verified by a preponderance of credible and reliable evidence, and must be reasonable in light of the subjective and objective evidence of the patient's complaints." *Id.*

In support of its contention that the injections and guidance were not medically necessary respondent relied upon the peer review of Dr. Weiss. He asserted that although "the words trigger points were in the report, no actual trigger points were noted." He went on to state that myofascial trigger points are localized hyperirritable palpable nodules in extremely sensitive bands of taut skeletal muscle fibers. These

nodules are painful on compression and give rise to local pain and pain referred to distant structures. It is clear that the diffuse tenderness throughout the cervical and/or lumbar chain would not qualify as trigger points. It should also be stressed that trigger points should be persistent areas of tenderness along with other associated symptoms and none of these criteria are met in this case. Furthermore, the use of ultrasound or other imaging studies for trigger point injections is not recommended."

In response to the peer review, applicant submitted a rebuttal by Dr. Etienne. He asserted that based on the examinations "the injection was appropriately provided since TPI improves pain in range of motion. Injection of trigger points with the local anesthetic is a relatively simple, cost-effective treatment that often produces an almost immediate decrease in pain. 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 then went on to state that "ultrasound is used to guide proper needle placement in muscle tissue and to avoid adipose or non-musculature structures during trigger point injections. Trigger point injections may have serious complications, and direct visualization of surrounding soft tissues and important structures can reduce the risk of such complications. Furthermore, blind needling can cause complications."

In reviewing all the evidence, I was persuaded by the rebuttal of Dr. Etienne that the trigger point injections under ultrasound guidance was medically necessary since trigger point injections are used to treat myofascial pain syndromes and also has been shown to decrease pain. I note that since the initial examination on December 20, 2022, Assignor had complaints of bilateral cervical and lumbar spine pain along with decreased ranges of motion, tenderness and palpable trigger points and trigger point tenderness. Although the peer reviewer stated that trigger points were not present, I find that a review of applicant's reports does in fact reveal trigger points along with continuing findings of tenderness and pain throughout the spine. Therefore, in the opinion of the treating physician the trigger point injections were medically necessary to treat Assignor's pain. As such, I find there was medical necessity for the trigger point injections.

Turning now to the ultrasound guidance, I was persuaded by the peer review of Dr. Etienne that the use of ultrasound guidance reduces complications that can be caused by "blind needling". As Dr. Etienne stated ultrasound is used to assist with the guidance of needles in the general vicinity of clinically identified trigger points and is used to guide proper needle placement in muscle tissue." Therefore, I find that Applicant has sustained its burden of persuasion in rebuttal and established medical necessity for the ultrasound guidance.

FEE SCHEDULE

Respondent contends that applicant billed in excess of the fee schedule and that the proper amount of reimbursement should be \$998.36 (\$499.18 per DOS). Respondent submitted an affidavit from Beth Seidman, CPC in support of its contention that applicant billed in excess of the fee schedule.

CPT CODE 76942

Applicant billed respondent for six units of ultrasound guidance in the total amount of \$1098.96 (\$231.26 for the first unit, and \$173.52 per unit for the additional five units).

Respondent contends reimbursement is limited to one unit in the amount of \$231.26.

Respondent's expert, Ms. Seidman stated as per CPT Assistant, December 2017; volume 27; Issue 12 radiology: diagnostic radiology question: when reporting ultrasound guidance for trigger point injections is it appropriate to report multiple units of code 76942 based on the number of injections? Answer: No, code 76942 may only be reported once, irrespective of the number of trigger point injections performed.

In reviewing all the evidence, I find that applicant is only entitled to one unit of reimbursement under CPT code 76942 since ultrasound guidance cannot be billed multiple times during the same procedure. I note as did Ms. Seidman that in a question and answer series published in the CPT Assistant December 2017 answers the question no as to whether CPT 76942 can be billed multiple units based on the number of injections. Here, the plain meaning of CPT Assistant states only one unit of 76942 should be reported. I find nothing ambiguous in this statement. The answer made it clear that only one unit is reportable with trigger point injection codes regardless of the number of injections or muscles injected. The CPT Assistant should be considered in determining the proper fee. It is appropriate to rely on the CPT Assistant to determine the proper fee schedule. As noted in *Matter of Global Liberty Ins. Co. v. McMahan*, MD, 172 AD 3d 500 (1 Dept. 2019), "because CPT Assistant is incorporated by reference into the CPT book, which is incorporated by reference into the Official New York Workers' Compensation Medical Fee Schedule applicable to this claim under the No-Fault Law, the award rendered without consideration of CPT Assistant is incorrect as a matter of law."

In light of the above, I find that Applicant is only entitled to bill for one unit of ultrasound guidance.

CONCLUSION: Applicant is awarded \$499.18 per date of service as follows: \$231.36 for ultrasound guidance, \$104.81 for trigger point injection, and \$163.01 for office visit. As such, the total amount awarded to applicant is \$998.36 (\$499.18x 2 DOS).

DECISION: PARTIAL AWARD IN FAVOR OF THE APPLICANT

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
	Atlantic			

	Medical & Diagnostic PC	04/13/23 - 04/13/23	\$2,069.97	Awarded: \$499.18
	Atlantic Medical & Diagnostic PC	05/11/23 - 05/11/23	\$1,883.77	Awarded: \$499.18
Total			\$3,953.74	Awarded: \$998.36

- 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.

Interest is to be calculated from the date of filing of the AR-1 (11/10/23). The end for the calculation of the period of interest shall be excluded from the calculation. In calculating interest, the date of accrual shall be excluded from the calculation (General Construction Law Section 20). Where a motor vehicle accident occurs after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple interest, calculated on a pro rate basis using a 30 day month. 11 NYCRR 65-3.9(a).

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee in accordance with 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 Nassau

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

09/14/2024
(Dated)

Glen Cacchioli

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:
7c6daf6eb67faba36e228b90350bb957

Electronically Signed

Your name: Glen Cacchioli
Signed on: 09/14/2024