American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:		
Pain & Surgery Ambulatory / **Applicant_ 1** (Applicant)	AAA Case No.	412010019509
	AAA Assessment No.	17 991 11072 10
- and -	Applicant's File No.	
Geico Insurance Company (Respondent)	Insurer's Claim File No.	0216927950101018

ARBITRATION AWARD

I, Stacy A. Presser, Esq., 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
☒07/01/10
and declared closed by the arbitrator on 7/1/10.

Miguel Terc, Esq., for Natalia Nastaskin, participated in person for the Applicant.
Jaime Drantch, Claims Representative, participated in person for the Respondent.

2. The amount claimed in the Arbitration Request, **$3,100.00**, 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

Whether Applicant is entitled to reimbursement for surgical injections, with respect to which Respondent denied reimbursement predicated upon a peer review.

4. Findings, Conclusions, and Basis Therefor

Applicant is seeking to recover for epidural/trigger point injections, performed on April 28, 2009, in connection with the treatment of injuries allegedly sustained by Assignor, a 44-year old female pedestrian, who, on November 20, 2008, was struck by a motor vehicle. She was initially seen in the hospital emergency room and cleared for discharge when x-rays were negative for fracture. In the ensuing months, she was treated conservatively with physical therapy and medications. She was eventually evaluated by a pain specialist for persistent neck and back pain.

A series of injections were recommended for herniated lumbar disc and left C5 radiculopathy. Procedures were performed on March 17, 2009 and March 31, 2009. The third procedure, disputed herein, consisted of fluoroscopically guided epidural steroid injection at C6-C7 and bilateral trapezius myofascial trigger point injections performed under anesthesia. Applicant submitted only the operative report concerning the procedure of 4/28/90. No other/prior medical records have been supplied.

Applicant has made a *prima facie* showing of its entitlement to reimbursement, as a matter of law, by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and the amount of the loss sustained, have been mailed and received and that payment of no-fault benefits is overdue. See, *Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D.3d 742(2004)*. Once Applicant has established a prima facie case, the burden then shifts to Respondent to establish a lack of medical necessity with respect to the benefits sought. See, *Citywide Social Work & Psy. Serv., PLLC v. Allstate Ins. Co., 8 Misc3d 1025A (2005)*. A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rational for denying the claim. See, *Healing Hands Chiropractic, P.C. v. Nationwide Assur. Co., 5 Misc3d 975 (2004)*. Restated, the evidence must at least show that the services were inconsistent with generally accepted medical/professional practice.

Respondent timely denied reimbursement predicated upon a peer review by its consulting physiatrist, Todd Stitik, M.D., who concluded that the disputed epidural/trigger point injections were not medically necessary and/or performed in a manner consistent with accepted medical standards. Dr. Stitik wrote, in pertinent part,

> *Peer-reviewed literature supporting the routine performance of a series of epidural injections without an assessment in between the injections is lacking…repeated injections should be predicated upon response. Unless there is definite improvement in terms of decreasing severity of symptoms [and/or] an improvement in function…additional injections should not be performed. In this case, these requirements were not met…*
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> *Trigger point injections…are recognized forms of treatment for active trigger points associated with myofascial pain syndromes. Myofascial pain is often associated with trigger point(s) and the associated soft tissue dysfunction including weakness and tightness of muscle with reflex, neurologic and vascular compensations. In this particular case, the diagnosis of a myofascial pain syndrome with active trigger points is not supported…*

In order to establish an absence of medical necessity and overcome the Applicant's prima facie case, Respondent must present a sufficient factual basis and medical rationale based on generally accepted medical standards and practices. See, *Nir v. Allstate Ins. Co., 7 Misc3d 544 (2005)*. A mere statement of opinion is not sufficient to overcome Applicant's prima face case. See, *CityWide Social Work & Psychological Servs. v. Travelers Indem. Co., 3 Misc3d 608 (2004)*. Having established the standard of care, the peer reviewer must indicate that the disputed treatment was not in accordance with such practice. See, *Elmont Open MRI v. Progressive Casualty, 2009 N.Y. Slip Op. 50693(u).*

I conclude that Respondent, via the peer review of Dr. Stitik, has met the afore-referenced burden of proof, in that said peer review sets forth a sufficient factual basis and medical rationale, based upon the records reviewed and upon a clearly articulated set of criteria. Where Respondent has presented sufficient evidence to establish a defense based on a lack of medical necessity, the burden then shifts to the Applicant, which must then present its own evidence of medical necessity and/or rebuttal to Respondent's peer review. See, *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc3d 131A (2006)*; *A. Khodadadi Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 16 Misc 3d 131A (2007).* Applicant has not submitted any such rebuttal, e.g. evidence of myofascial pain syndrome and/or prior injection response.

Accordingly, Respondent's denial is upheld and Applicant's claim denied in its entirety.

This decision 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.

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 New York.

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

Stacy A. Presser

8/2/10
(Dated) (Stacy A. Presser, Esq.)

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.