In the Matter of the Arbitration between

Shore Orthopaedic Group a/s/o N.S.
CLAIMANT(s),

v.

Forthright File No: NJ1903001833107
Proceeding Type: On-the-Papers
Insurance Claim File No: 17-4544513
Claimant Counsel: Midlige Richter
Claimant Attorney File No: 190.1779
Respondent Counsel: Cooper Maren Nitsberg Voss & Decoursey
Respondent Attorney File No:
Accident Date: 08/17/2017

Progressive Insurance Company
RESPONDENT(s).

Award of Dispute Resolution Professional

Dispute Resolution Professional: Scott G. Sproviero Esq.

I, the Dispute Resolution Professional assigned to the above matter, pursuant to the authority granted under the "Automobile Insurance Cost Reduction Act", *N.J.S.A. 39:6A-5, et seq.*, the Administrative Code regulations, *N.J.A.C. 11:3-5 et seq.*, and the *Rules for the Arbitration of No-Fault Disputes in the State of New Jersey* of Forthright, having considered the evidence submitted by the parties, hereby render the following Award:

Hereinafter, the injured person(s) shall be referred to as: the "Injured Party".

Findings of Fact and Conclusions of Law

The sole issue to be determined by way of the within on-the-papers arbitration proceeding is whether lumbar trigger point injections administered by Claimant's Dr. Woska on January 19, 2018 and February 23, 2018 were clinically supported as medically necessary.

Claimant, Shore Orthopaedic Group, is the assignee of the Injured Party, which Injured Party suffered bodily injuries when involved in a motor vehicle collision which occurred on August 17, 2017, and which loss was insured by the Respondent through a policy of automobile liability insurance providing PIP medical expense coverage to the Injured Party. As a result of neck and low back injuries sustained by the twenty-two (22) year old Injured Party at the time of the occurrence of the insured loss, and after the initial pursuit of conservative treatment through chiropractic manipulations, the Injured Party presented to Claimant Dr. Woska for orthopedic consultation and treatment.

The record of the within proceeding confirms, and the DRP so finds that following the initiation of chiropractic treatment, the Injured Party complained of worsening neck and low back pain. As a result of such complaints, the patient's treating chiropractic physician referred the Injured Party to Dr. Woska, an orthopedic specialist.

The DRP further finds that the Injured Party presented to Dr. Woska on December 1, 2017. Upon initial physical examination of the patient, the attending orthopedist noted spasms, tenderness and limited ranges of motion in the cervical and lumbar spinal regions. Moreover, the attending orthopedist reviewed MRIs which were conducted during the initial phase of the patient's treatment, and which MRI studies revealed a disc herniation at L5/S1, as well at disc bulging at C4/5. Dr. Woska further noted that the displayed neck and low back pain, secondary to myofascial syndrome. In response to such symptomology, Dr. Woska recommended that the Injured Party be treated by means of trigger point injections in the lumbar region.

The record of the within proceeding further confirms, and the DRP so finds that Claimant requested pre-certification to perform trigger point injections, triggering the conduct of a Medical Director Review by Dr. S. Cerniglia on December 7, 2017. Upon consideration of Claimant's pre-certification request, Dr. Cerniglia opined that the treating physician's treatment records did not support a diagnosis of myofascial pain syndrome trigger points, but rather were indicative of facet tenderness. On the basis of the foregoing, Dr. Cerniglia further opined the treating physician had failed to demonstrate clinically support for the establishment of the medical necessity of the trigger point injections requested by the Claimant.

The DRP further finds that upon receipt of the foregoing adverse determination, Claimant requested the conduct of a pre-service appeal, triggering an appeal review by Dr. Cerniglia, who upheld his own initial adverse determination.

Notwithstanding such adverse determinations, Dr. Woska administered an initial set of trigger point injections at the L3/L4/L5 levels on January 19, 2018.

The DRP finds that thereafter, on February 2, 2018, the Injured Party was re-examined Dr. Woska, when and at which time the Injured Party reported 50% improvement resulting from the January 19, 2018 injection event. Notwithstanding such improvement, Dr. Woska reported that physical examination of the patient remained positive for bilateral lumbar tenderness and myofascial spasm with a positive jump sign. Given such residual symptomology, and the improvement demonstrated upon the administration of an initial round of trigger point injections, Dr. Woska administered a second series of trigger point injections at the L3/L4/L5 levels at the time of the February 2, 2018 consultation.[1]

The record of the within proceeding further confirms, and the DRP so finds that the Injured Party again

presented to Dr. Woska on February 23, 2018, when and at which time the patient reported two (2) weeks of complete relief resulting from the February 2, 2018 injection event, followed by a gradual return of low back pain. Upon physical examination of the Injured Party, the attending physician continued to note bilateral lumbar myofascial spasm with taut bands and positive jump signs, Given such prior response to trigger point injections, and given the residual symptomology noted upon physical examination of the patient, Dr. Woska administered a third series of trigger point injection at the time of the February 23, 2018 consultation.

Respondent has denied the payment of PIP medical expense benefits on account of the trigger point injections administered on January 19, 2018 and February 23, 2018, triggering the initiation of the within on-the-papers arbitration proceeding.

Where there is a dispute, the burden rests on the claimant to establish that the services for which he seeks PIP payments were reasonable, necessary and causally related to an automobile accident. *Miltner v. Safeco Ins. Co. of Am.*, 175 N.J. Super. 156, 158 (Law Div. 1980). The claimant must carry that burden of proof by a preponderance of the evidence. *State v. Seven Thousand Dollars*, 136 N.J. 233 (1994).

In New Jersey, every standard automobile liability insurance policy shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault. Personal injury protection coverage means and includes payment of medical expense benefits, which must also be in accordance with the benefit plan provided in the policy and approved for reasonable, necessary and appropriate treatment. N.J.S.A. 39:6A-4.

Pursuant to N.J.A.C. 11:3-4.2, "clinically supported" means that a health care provider prior to selecting, performing or ordering the administration of a treatment or diagnostic test has:

(1) personally examined the patient to ensure that the proper medical indications exist to justify ordering the treatment or test;

(2) physically examined the patient including making an assessment of any current and/or historical subjective complaints, observations, objective findings, neurologic indications and physical tests;

(3) considered any and all previously performed tests that relate to the injury and the results and which are relevant to the proposed treatment or test; and

(4) recorded and documented these observations, positive and negative findings and conclusions on the patient's medical records.

Pursuant to N.J.S.A. 39:6A-2(m), "medically necessary" means that the treatment is consistent with the symptoms or diagnosis, and treatment of the injury (1) is not primarily for the convenience of the injured person or provider, (2) is the most appropriate standard or level of service which is in accordance with standards of good practice and standard professional treatment protocols, and (3) does not involve unnecessary diagnostic testing.

Moreover, the necessity of medical treatment is a matter to be decided, in the first instance, by the treatment physician, and an objectively reasonable belief in the utility of a treatment or diagnostic method based on credible and reliable evidence of its medical value is sufficient to qualify the expense for the payment of PIP medical expense benefits. See, *Thermographic Diagnostics v. Allstate*, 125 N.J. 491, 512 (1991).

The DRP has considered the respective medical proofs relied upon by the parties, and finds that the preponderance of the credible medical evidence appear of record in the within on-the-papers arbitration

proceeding supports the conclusion that the lumbar trigger point injections administered at the L3/L4/L5 levels on January 19, 2018 and February 23, 2018 were clinically supported as medically necessary. In support of such determination, the DRP finds that the Respondent's medical defense expert found that the Injured Party was suffering from lumbar spine pain, which pain symptomology was categorized as facetogenic in nature, and not myofascial in nature as otherwise diagnosed by the treating physician. The DRP further finds that given the treating physician's notation of myofascial spasms in the lumbar spine with taut bands and positive jump signs, the DRP finds it appropriate to defer to the observations noted by, and opinions offered by the treating physician as to the nature of the pain symptomology being suffered by the Injured Party.

On the basis of the foregoing analysis, the DRP finds that an award of PIP medical expense benefits is warranted on account of the lumbar trigger point injections administered by the Claimant on January 19, 2018 and February 23, 2018.

Accordingly, an award of PIP medical expense benefits in the amount of $489.72 shall be provided to the Claimant, subject to all applicable co-payment and deductible requirements, and further subject to all applicable policy coverage limitations.

The Claimant is a prevailing party in the within matter, and as such, is entitled to an award of counsel fees and costs. As stated by the Court in Scullion v. State Farm Ins. Co., 345 N.J. Super. at 442 (App. Div. 2001), in considering an award of counsel fees, the fact finder should consider the amount of time that reasonable should have been expended to secure payment of the benefits in issue. Moreover, N.J.A.C. 11:3-5.6(e) provides, in pertinent part, that an award may include attorney fees for a successful claimant in an amount consonant with the medical benefits so awarded, and otherwise in accordance with the criteria set forth in Rule 1.5 of the New Jersey Supreme Court Rules of Professional Conduct. Such rule sets forth that the factors to be considered in calculating a reasonable counsel fee include the time and labor required to represent the client's interests, the novelty and difficulty of the questions involved, the fees customarily charged in the locality for similar services, the amount at stake, the result obtained and the skill, ability expertise and reputation of the attorney(s) providing the services in question.

In the instant matter, the DRP has taken all of the foregoing factors into consideration, and has applied a Lodestar analysis to the computation of attorney's fees to be awarded in the within proceeding. On the basis of such consideration and analysis, the DRP finds and concludes that the sum of $750.00 constitutes a fair and reasonable counsel fee on account of the services provided and the result obtained. In fashion such award of fees, the DRP has considered the expertise of the Claimant's counsel, and the nature of the work effort involved in the prosecution of the within claim. Costs in the amount of $200.00 are likewise awarded to Claimant.

Interest is awarded pursuant to *N.J.S.A. 39:6A-5h* in an amount to be calculated by the Respondent.

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[1] Respondent provided PIP medical expense benefits on account of the trigger point injections administered on February 2, 2018.

Therefore, the DRP ORDERS:

Disposition of Claims Submitted

1. Medical Expense Benefits: Awarded

Medical Provider	Amount Claimed	Amount Awarded	Payable To
Shore Orthopaedic Group	$489.72	$489.72	Shore Orthopaedic Group

The awarded amounts are subject to:
Deductibles
Co-payments
Policy limits

2. Income Continuation Benefits	Not in Issue	
3. Essential Services Benefits	Not in Issue	
4. Death Funeral Expense Benefits	Not in Issue	
5. Award of Interest	Awarded	Amount to be calculated by Respondent pursuant to N.J.S.A. 39:6A-5.2g

Attorney's Fees and Costs

I find that the Claimant prevailed and I award the following costs and fees (payable to Claimant's attorney unless otherwise indicated) pursuant to N.J.S.A. 39:6A-5.2g

Cost:$ 200.00 Attorney's fees:$ 750.00

THIS AWARD is rendered in full satisfaction of all claims and issues presented in the arbitration proceeding.

Entered in the State of New Jersey

Honorable Scott G. Sproviero
Dispute Resolution Professional

Date:09/20/19