



FORTHRIGHT

In the Matter of the Arbitration between

Sall Myers Medical Associates a/s/o M.B.
CLAIMANT(s),

v.

NJ PLIGA
RESPONDENT(s).

Forthright File No: NJ1911001870577
Proceeding Type: In-Person
Insurance Claim File No: NJUM-0170-0004-1022-00001
Claimant Counsel: Midlige Richter
Claimant Attorney File No: 150.3843
Respondent Counsel: Purcell Mulcahy Flanagan
Respondent Attorney File No: (216)26643 KAM
Accident Date: 12/11/2018

Award of Dispute Resolution Professional

Dispute Resolution Professional: Suzanne J. Frankland

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: MB

In Person Proceeding Information

A proceeding was conducted on: 03/03/2020

Claimant or claimant's counsel appeared by telephone . Respondent or respondent's counsel appeared in person .

The following amendments and/or stipulations were made by the parties at the hearing:

Caimant has amended the demand to \$4,269.22 for DOS 2/25/19 - 4/25/19.

Findings of Fact and Conclusions of Law

This claim arises from a motor vehicle accident that occurred on 12/11/18 for which MB seeks PIP benefits from NJ PLIGA.

Nature of dispute:

In accordance with N.J.A.C. 11:3-5.6(d) and Forthright Rule 43, the following issue were identified by the parties and submitted for my determination at the time of hearing as the issues in dispute:

Issue I: Medical Necessity

The only issue identified by the parties are those set forth above. No other issues have been presented for my determination. Any other issues raised previously by the parties in prehearing submissions are deemed waived.

In rendering my decision, I have considered the applicable law, counsel's arguments at the oral hearing on March 3, 2020 and the following documents submitted by the parties:

Claimant:

1. Demand with attachments.
2. Submission dated 2/7/20.

Respondent:

1. Submission dated 12/30/19.

Claimant's Position:

Claimant seeks payment for treatment performed on 2/25/19 – 4/25/19 in the amount of \$4,269.22.

Claimant submits that the patient began treating with claimant on 1/8/19 for injuries sustained in a 12/11/18 MVA where she was injured as a pedestrian. She was treated at the emergency room and underwent a CT scan and x-rays. The patient presented to Sall Myers on 1/8/19 with complaints of bilateral shoulder pain, low back pain greater on the left with radiation to the left leg and numbness / tingling in the left thigh. She was recommended for conservative treatment, including x-rays and physical therapy to the affected areas.

She followed up on 1/29/19 with limited shoulder ROM, positive Hawkins sign, weakness of right shoulder rotation, limited lumbar ROM, weakness of bilateral hip extension, diminished sensation in the right medial knee, positive SLR. Dr. Speez recommended right shoulder MRI and lumbar MRI.

Lumbar MRI was performed on 2/25/19 revealing disc bulging at L4-5 and L5-S1.

Right shoulder MRI was performed on 2/25/19 revealing inflammatory changes in the AC joint, AC arthropathy and infraspinatus tendinitis.

The patient was next seen on 3/6/19 for orthopedic consultation for right shoulder pain and lumbar pain radiating into the buttock area. Right shoulder exam remained positive. Lumbar exam also remained positive. Dr. Zaretsky recommended right shoulder injection, continued PT to decrease pain and inflammation and increase function and mobility to the affected areas and EMG/NCV testing of the bilateral lower extremities in order to differentiate lumbar radiculopathy from facet syndrome in order to help guide future treatment.

The patient followed up with Dr. Speez on 3/12/19 with continued right shoulder complaints. After examination, Dr. Speez recommended PT to decrease pain and inflammation and increase function and mobility of the affected areas.

EMG/NCV was performed on 4/8/19 and revealed left L4-5 radiculopathy.

The patient was seen for orthopedic follow up on 4/11/18 and the EMG/NCV was discussed. The patient had continued shoulder complaints and positive findings on examination. Dr. Zaretsky recommended subacromial cortisone injection to the right shoulder which was administered in his office. He recommended follow up in two weeks. She was also referred for pain management consultation with regard to her continued lumbar complaints and EMG/NCV results.

The patient appeared for orthopedic consultation on 4/25/19 and it was noted that the injection had completely relieved her right shoulder pain and symptoms, which was confirmed on physical examination.

The patient was seen for pain management consultation on 6/19/19 with continued low back complaints with radiation to the left leg and numbness / tingling in the legs. Dr. Demesmin recommended left LESI.

Claimant states that the patient chose to continue conservative care, foregoing interventional pain management procedures and was ultimately discharged from active care on 7/11/19.

Claimant argues that the treatment as issue was medically necessary and that deference should be afforded to the treating physician.

Respondent's Position:

Respondent relies on an MDR of Dr. Lager dated 2/8/19. He denied pre-certification for the lumbar MRI and shoulder MRI. He stated that the patient began PT on 1/10/19 and continued through 2/4/19 but that the duration and frequency were not documented. He stated that there was no evidence that the patient had completed a complete course of PT and stated that 4-6 weeks of conservative care should be undertaken prior to testing. An appeal was filed, and a report issued by Dr. Park dated 2/19/19. He stated that there was not sufficient documentation of an adequate course of conservative treatment. He states that there were no physical exam findings to support immediate MRI studies without a full course of conservative treatment.

Respondent relies on an MDR of Dr. Gonzalez dated 3/1/19. He denied the request for a psychiatric diagnostic evaluation stating that there was no objective method used to establish causality between the patient's complaints of anxiety and the subject MVA. He recommended that the patient undergo the Becks Anxiety Inventory to provide a quick assessment of whether the patient requires additional treatment. An appeal was filed, and a review issued by Dr. Chandarana on 3/7/19 upholding the denial.

Respondent relies on an MDR by Dr. Lager dated 3/18/19 for EMG/NCV testing. He stated that testing was not medically necessary where there is an obvious diagnosis of radiculopathy and there were no radicular symptoms that were not explained by an MRI. Additionally, he stated that further PT was not necessary as the patient had undergone two months of PT and efficacy had not been established. Further, he stated that the right shoulder injection was not needed as the patient was struck on the left side and a direct causal relationship could not be established between the right shoulder and the MVA. An appeal was filed, and a report issued by Dr. Ponzio on 3/27/19 upholding the denial. He stated that the radiographic studies were not consistent with a traumatic injury as the right shoulder MRI listed degenerative AC joint arthropathy and supraspinatus tendinitis and her lumbar spine MRI listed degenerative multilevel disc bulges. He noted that the exam showed positive findings of right shoulder

impingement and low back pain with lumbar nerve root irritation, but that causality had not been established as specific injuries to the low back or right shoulder were not described. Additionally, he states that there was not a complete course of conservative management to support medical necessity of the requested bilateral lower extremity EMG. Further, he states that the EMG would not enhance the findings that were obtained from the neurological examination. Lastly, the appeal letter did not offer additional medical documentation support an MVA related injury.

Law:

Pursuant to N.J.S.A. 39:6A-5(g), payment of PIP benefits:

“...shall be overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where, within 60 days of receipt of notice of the claim, the insurer notifies the claimant or his representative in writing of the denial of the claim or the need for additional time, not to exceed 45 days, to investigate the claim, and states the reasons therefor.”

According to N.J.S.A. 39:6A-1, et seq., for “medical expenses” to be compensable under the New Jersey No-Fault Act, a health care provider’s service must be “medically necessary”. Specifically, N.J.S.A. 39:6A-2 provides:

“e. “Medical expenses” means reasonable and necessary expenses for treatment or services as provided by the policy, including medical, surgical, rehabilitative and diagnostic services and hospital expenses, provided by a licensed health care provider licensed or certified by the State or by another state or nation, and reasonable and necessary expenses for ambulance services or other transportation, medication and other services may be provided for, and subject to such limitations as provided for in the policy, as approved by the commissioner....

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, as such protocols may be recognized or designated by the Commissioner of Banking and Insurance, in connection with the Commissioner of Health and Senior Services or with the professional licensing or certifying board in the Division of Consumer Affairs in the Department of Law and Public Safety, or by a nationally recognized professional organization, and (3) does not involve unnecessary diagnostic testing.” Id.

Where there is a conflict of testimony of medical experts, generally greater weight is to be given to the testimony of the treating physician. Mewes v. Union Building & Construction Co., 138 N. J. Super (App. Div. 1957). Nevertheless, “[e]xpert testimony need not be given greater weight than other evidence nor more weight than it otherwise deserves in light of common sense and experience.” See Matter of Yaccarino, 117 N.J. 175, 196 (1989)

Certain diagnostic tests have been determined to have value in the evaluation of injuries, the diagnosis and development of a treatment plan for injured persons, when medically necessary and consistent with clinically supported findings. N.J.A.C. 11:3-4.5(b). Specifically, needle EMG testing is reimbursable “when used in the evaluation and diagnosis of neuropathies and radicular syndrome where clinically supported findings reveal a loss of sensation, numbness or tingling... This test should not normally be

performed within 14 days of the traumatic event and should not be repeated where initial results are negative. Only one follow up exam is appropriate.” N.J.A.C. 11:3-4.5(b)(1). In addition, N.J.A.C. 11:3-4.5(b)(2) indicates that NCV Study is reimbursable when used to evaluate neuropathies and/or signs of atrophy, but not within 21 days following the traumatic event.

The New Jersey Care Paths establish guidelines for cervical and lumbar injuries with radicular complaints. Specifically, EMG testing may be considered after a trial of conservative treatment if symptoms persist without improvement unless the diagnosis of radiculopathy is obvious and specific on clinical examination.

Findings:

Based on a thorough review of the medical evidence provided, I find that claimant has sustained its burden of proof as to medical necessity of the treatment at issue. The patient did sustain documented injury to the neck, back and right shoulder as a result of the MVA as well as noted anxiety when crossing the street. Past medical history was noted to be negative. At the initial exam on 1/15/19 the lumbar exam was positive including radiating pain, positive SLR, positive Lasegue’s, positive Patrick’s, weakness in right hip extensors and decreases sensation. These complaints continued throughout the course of treatment. There were exams on 2/1/19 and 2/19/19 with continued complaints and positive findings. I find that the MRIs on 2/25/19 were medically necessary. I accept claimant’s statements as to medical necessity for the testing. I also note that the patient was over two months from the date of the MVA on 12/11/18 and that the testing was not acute. Further, I note that the MRI results were relied upon to guide further treatment. I find that the re-evaluation on 3/12/19 was also medically necessary. The patient underwent PT from 3/18/19 – 4/25/19 for the right shoulder. I find the PT to be medically necessary based on the patient’s ongoing complaints and positive findings on examination. I also find the shoulder injection on 4/11/19 to be medically necessary as the patient was not sufficiently improving from PT alone. Also, it is noted that the patient’s shoulder complaints resolved following the injection. Lastly, I find the lower extremity EMG/NCV on 4/8/19 to be medically necessary based on the patient’s continued complaints, radicular complaints, numbness and tingling and positive exams. The claimant states that the testing was needed to guide further treatment and I note that the patient was referred for pain management consultation, which took place on 6/19/19 and recommended LESI. Overall, I find the patient’s course of care to be appropriate, medically necessary and related to the MVA.

It is noted that I have reviewed the MDRs and appeals submitted by respondent. As stated, the patient was over 2 months post MVA and one month into treatment when the MRIs were performed. I find that they were needed to evaluate the patient and were used to guide future care. I find that the patient did complain of ongoing anxiety and that the office visit and psychiatric diagnostic evaluation on 3/12/19 was appropriate. Further, I am persuaded by claimant’s proofs that the EMG/NCV was medically necessary based on the examination findings. Claimant explains that the testing is needed for a differential diagnosis and I agree. It is noted that the patient proceeded on to pain management and that LESI was recommended. In sum, I am persuaded by claimant’s proofs that the entirety of claimant treatment was appropriate and medically necessary.

The demand is awarded in full.

Attorney Fees:

Attorney fees, costs and interest are not collectable from NJ PLIGA. N.J.S.A. 17:30A-5 and Gargiulo v Rutgers Cas. Ins. Co., 265 N.J. Super. 225 (App. Div. 1993).

Therefore, the DRP ORDERS:

Disposition of Claims Submitted

1. Medical Expense Benefits: Awarded

Medical Provider	Amount Claimed	Amount Awarded	Payable To
Sall Myers Medical Associates	\$4,269.22	\$4,269.22	Sall Myers Medical Associates

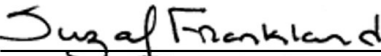
- 2 . Income Continuation Benefits Not in Issue
- 3 . Essential Services Benefits Not in Issue
- 4 . Death Funeral Expense Benefits Not in Issue
- 5 . Award of Interest Denied

Attorney's Fees and Costs

I find that the Claimant prevailed but is not legally entitled to costs and fees because:
NJ PLIGA is not subjected to interest and attorney's fees and costs

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

Entered in the State of New Jersey



Suzanne J. Frankland, Esq.
Dispute Resolution Professional

Date:04/17/20