

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

In the matter of:

██████████

Petitioner,

v

File No. 145548-001

Health Alliance Plan of Michigan,

Respondent.

Issued and entered
this 23rd day of January 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. BACKGROUND

On December 29, 2014, ██████████, on behalf of her minor son ██████████ (Petitioner), filed a request with the Director of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits through Health Alliance Plan of Michigan (HAP), a health maintenance organization. The Director immediately notified HAP of the external review request and asked for the information it used to make its final adverse determination. The Director received HAP's response on December 30, 2014. After a preliminary review of the information submitted, the Director accepted the request on January 5, 2015.

The case involves medical issues so the Director assigned it to an independent review organization which provided its analysis and recommendation to the Director on January 15, 2015.

II. FACTUAL BACKGROUND

The Petitioner's benefits are defined in HAP's *HMO Subscriber Contract*. His coverage with HAP was effective on August 1, 2014.

The Petitioner, born [REDACTED] has CHARGE syndrome, a complex pattern of birth defects which involves extensive medical and physical difficulties. He has never spoken and uses an assistive device to communicate.

The Petitioner's school provides speech therapy but a speech pathologist recommended additional help for his condition outside the school system. The Petitioner is currently an established patient with a speech therapist at [REDACTED] Hospital and that therapy was covered by his prior health plan.

On August 25, 2014, HAP received a request to cover speech therapy for the Petitioner at [REDACTED] Speech and Language Department. HAP denied the request.

The Petitioner's mother appealed the denial through HAP's internal grievance process. At the conclusion of that process HAP maintained its denial and issued a final adverse determination dated November 26, 2014. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did HAP properly deny authorization for the Petitioner's speech therapy?

IV. ANALYSIS

Respondent's Argument

In its November 26, 2014, final adverse determination HAP explained its denial of coverage to the Petitioner's mother:

The [*Grievance*] Committee carefully considered the information you presented during the Grievance Hearing. According to the HMO Subscriber Contract, Section 5.1 (p) number (5) excludes coverage for services that are the responsibility of another public or private agency or entity. The school district is responsible for providing Speech Therapy services for the diagnosis and treatment of communication disabilities.

According to HAP's Benefit Administration Manual policy, Speech Therapy states HAP will provide coverage for Speech Therapy when it is related to an organic medical condition (i.e., attributable to a Physiological cause) or an immediate postoperative or convalescent state. I have enclosed a copy this section from HAP's Benefit Administration Manual policy and a copy of Section 5.1 (p) and number (5) from your HMO Subscriber Contract. The information submitted in your first and second level Appeals does not substantiate criteria has

been met for Speech Therapy. **Therefore, a decision has been made to uphold the denial for Speech Therapy.**

Petitioner's Argument

In her November 6, 2014, letter of appeal to HAP, the Petitioner's mother explained why she is seeking coverage for additional speech therapy at [REDACTED] Hospital:

[The Petitioner] does receive speech therapy in the [REDACTED] Public School System, but this is for only one hour per week and not sufficient. [He] has no verbal language and no way to communicate without the use of his communication device. His teachers and para pros are not sufficiently trained to teach him the language of Unity which he has been learning for the past 7 years with the assistance of private speech therapy. He has been progressing at a reasonable rate but without the speech therapy on a private level this will stop. It is imperative that [he] continues with his private speech therapy so that he can communicate with the world. He is a bright child who is locked in his body because of his physical impairments. As stated before he has CHARGE Syndrome which is relatively rare and involves many systems. He does not have the usual developmental delay whereby phonics and enunciation are the issue, but he has no speech whatsoever. There are brain and pituitary abnormalities as evidenced by MRI along with laryngotracheal malacia. These are physical abnormalities and not developmental.

Also included with the external review request was an October 28, 2014, letter from the Petitioner's school speech language pathologist:

[The Petitioner] . . . continues to carry the following diagnoses: CHARGE Syndrome. [His] expressive and receptive language impairments are a result of his diagnosis, and are not developmental. Speech and Language impairments are documented deficits associated with CHARGE syndrome. He requires intensive treatment by qualified, experienced speech language pathologists in order to target the remediation of his expressive and receptive language delays. Without the medically necessary therapy, [he] will not improve. His language disorders cannot be "outgrown."

[The Petitioner] receives speech therapy services through his educational programming at school focused on educationally relevant communication goals and objectives. [His] severe receptive and expressive language impairments affect his ability to effectively communicate with everyone in his life, however. He has limited abilities to express his wants and needs, socially communicate with others, and participate in conversational exchanges. [He] is nonverbal and requires augmentative and alternative communication methods in order to communicate with others in conventional ways. He currently uses a Vantage

Lite device from the [REDACTED] Company. In order to become a functional user of this device, [the Petitioner] needs continued language therapy focused on the strategies necessary to learn the language system used on his AAC [*augmentative and alternative communication*] device. While we are able to target those aspects of communication with the device that are educationally relevant in school, it is imperative that [he] continue to receive speech and language therapy outside of the school setting so that all aspects of communication that are relevant to [his] life can be targeted. Users of this device with neurogenic disorders require intensive, ongoing therapy in order to become fully functional with it.

Director's Review

One of the reasons HAP cited as the basis for its denial was this provision in the subscriber contract under "Section 5 Exclusions and Limitations" (pp. 19, 23):

The following are not covered under this Contract:

5.1 Non-Covered Services

* * *

p. Therapy and Rehabilitation Services

* * *

- 5) Therapy Services for diagnosis and treatment of disabilities for which another agency or entity, public or private, has responsibility.¹

It is apparently HAP's contention that the services the Petitioner seeks to receive from [REDACTED] Hospital are excluded from coverage because they are the responsibility of the Petitioner's school. But HAP has not explained why the exclusion specifically applies in this case, i.e., why the school is responsible for providing the services the Petitioner is seeking at [REDACTED] Hospital. The Petitioner's school speech language pathologist noted that the school is not providing all the services the Petitioner needs. As the pathologist said above:

[The Petitioner] receives speech therapy services through his educational programming at school focused on educationally relevant communication goals and objectives. [His] severe receptive and expressive language impairments affect his ability to effectively communicate with everyone in his life, however. He has limited abilities to express his wants and needs, socially communicate with others, and participate in conversational exchanges. [He] is nonverbal and

¹ A similar exclusion is found in HAP's benefit administration manual policy for speech therapy.

requires augmentative and alternative communication methods in order to communicate with others in conventional ways.

Because HAP did not justify its reliance on the exclusion to deny coverage for the services the Petitioner has requested from ██████████ Hospital, the Director concludes that HAP has abandoned that argument and will decide this case on the criteria for coverage in the subscriber contract.

The speech therapy benefit is described in the subscriber contract (p. 15):

4.16 Therapy and Rehabilitation Services

* * *

c. Speech Therapy

- 1) The therapy must be related to an organic medical condition (i.e., attributable to a physiological cause) or an immediate postoperative or convalescent state and be restorative in nature.
- 2) Short-term speech Therapy Services, either in the home or outpatient clinical setting, are covered when treatment begins following Illness or Injury.

The number of visits for speech therapy is limited to a combined annual visit limit of 60 visits for physical therapy, speech therapy and occupational therapy.

The question of whether the Petitioner met the criteria in the subscriber contract for coverage of speech therapy was presented to an independent review organization (IRO) as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO physician reviewer is certified by the American Board of Pediatrics; a fellow of the American Academy of Pediatrics; a member of the Association of Military Surgeons United States; published in the peer reviewed medical literature, and in active clinical practice. The IRO report contained the following analysis and recommendation:

Reviewer's Decision and Principal Reasons for the Decision:

It is the determination of this reviewer that the enrollee does meet HAP's criteria for speech therapy.

Clinical Rationale for the Decision:

Based on the documentation submitted for review, the enrollee has an organic disorder that requires speech therapy. The enrollee has CHARGE syndrome and has been receiving speech therapy since age three (3). He is learning to

communicate using an assistive device. He is getting private therapy and the provider and parent are requesting continuation with the same therapist two (2) times per week.

CHARGE syndrome was initially defined as a non-random association of anomalies (Coloboma, Heart defect, Atresia choanae, Retarded growth and development, Genital hypoplasia, Ear anomalies/deafness). In 1998, an expert group defined the major (the classical 4C's: Choanal atresia, Coloboma, Characteristic ears and Cranial nerve anomalies) and minor criteria of CHARGE syndrome. Children with CHARGE syndrome require intensive medical management as well as numerous surgical interventions. They also need multidisciplinary follow up.

In one study, thirty-nine percent of the participants did not use symbolic language to communicate. The results suggest that factors affecting the majority of participants -- physical disorders, vision loss, and hearing loss -- may adversely affect communication ability. However, these factors did not preclude the development of symbolic language. Factors that were related to the development of symbolic language were success in the treatment of hearing loss with amplification, the ability to walk independently, and communication training initiated by three (3) years of age.

Review of the literature demonstrates that speech deficits are a common associated condition in CHARGE syndrome. Speech disorders are deficits in the acquisition of speech skills and voice quality. Speech disorders include problems in the production of speech sounds; disruptions in the flow or rhythm of speech; problems with voice pitch, volume, or quality; and poor intelligibility. Types of primary speech and language delay include developmental speech and language delay, expressive language disorder, and receptive language disorder. Secondary speech and language delays are attributable to another condition such as hearing loss, intellectual disability, autism spectrum disorder, physical speech problems, or selective mutism. The primary goals of therapy are to teach children strategies for comprehending spoken language and producing appropriate communicative behavior, and to help parents learn ways of encouraging their children's communication skills. There are good data available to support the effectiveness of speech-language therapy, particularly for children with primary expressive language disorder.

In 2004, the American Speech-Language-Hearing Association (ASHA) wrote, "In general, individuals of all ages are eligible for speech-language pathology services when their ability to communicate and/or swallow effectively is reduced or impaired or when there is reason to believe (e.g., risk factors) that treatment will prevent the development of a speech, language, communication, or feeding and swallowing disorder; reduce the degree of impairment; lead to improved

functional communication skills and/or functional feeding and swallowing abilities; or prevent the decline of communication, and/or swallowing abilities. The decision to admit an individual to speech-language pathology services in a school, health care, or other setting must be made in conjunction with the individual and family or designated guardian, as appropriate.”

Per the health plan’s policy, in order to be covered, speech therapy must be related to an organic medical condition. CHARGE is an organic medical condition. It is a syndrome of malformations with recognized speech issues. As such, the speech therapy would be eligible for coverage for this enrollee who is as of yet still learning to communicate and has the potential to achieve meaningful communication.

Recommendation:

It is the recommendation of this reviewer that the denial issued by Health Alliance Plan of Michigan for the speech therapy be overturned.

The Director is not required to accept the IRO’s recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the IRO’s recommendation is afforded deference by the Director. In a decision to uphold or reverse an adverse determination the Director, must cite “the principal reason or reasons why the [Director] did not follow the assigned independent review organization’s recommendation.” MCL 550.1911(16)(b). The IRO’s analysis is based on extensive experience, expertise and professional judgment. Furthermore, it is not contrary to any provision of the Petitioner’s certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO’s recommendation should be rejected, finds that HAP’s denial of authorization for the requested speech therapy is not consistent with the terms of the Petitioner’s coverage.

V. ORDER

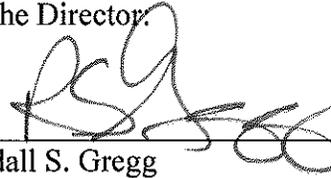
The Director reverses HAP’s final adverse determination of November 26, 2014. HAP shall, within 60 days of the date of this Order, authorize the requested speech therapy and shall, within seven days of providing authorization, furnish the Director with proof it implemented this Order. Coverage is subject to all applicable terms and conditions of the speech therapy benefit in the subscriber contract.

To enforce this Order, the Petitioner may report any complaint regarding the implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, at this toll free telephone number: (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Annette E. Flood
Director

For the Director.

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg
Special Deputy Director