

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. 153536-001

Total Health Care USA,
Respondent.

Issued and entered
this 2nd day of June 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner), a minor,¹ receives group health care benefits from Total Health Care USA (THC), a health maintenance organization. When the Petitioner's physician asked THC to authorize a referral to a non-affiliated (i.e., non-network) provider, THC denied the request.

The Petitioner appealed the denial through THC's internal grievance process. At the conclusion of that process, THC maintained its decision in a final adverse determination dated April 21, 2016.

On May 4, 2016, ██████████, the Petitioner's mother, filed a request with the Director of Insurance and Financial Services for an external review of that final adverse determination under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Director immediately notified THC of the external review request and asked for the information it used to make its final adverse determination. THC responded on May 10, 2016, and, after a preliminary review of the material submitted, the Director accepted the request on May 11, 2016.

1. Born May 15, 2002.

The issue in this external review can be decided by a contractual analysis. The Director reviews contractual issues pursuant to MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II. BACKGROUND

The Petitioner's health care benefits and rights are described in THC's *HMO Certificate of Coverage* (the certificate) and *HMO Member Handbook*.

The Petitioner has epilepsy with medically intractable seizures. She has had specialty care for her seizures at both Saint John Hospital and Children's Hospital of Michigan. [REDACTED], MD, of Saint John Hospital, a pediatric neurologist, described her condition in January 2016:

She has a poor quality of life because of frequent seizures, side effects from her medications which she takes at high doses, comorbid conditions such as panhypopituitarism, developmental delay and being overweight. She is also on multiple endocrinology prescribed medications such as thyroid hormone, steroids, and growth hormone. She has to be given as needed nasal administered midazolam and rectal administered diazepam. . . . She presented in early childhood with prolonged status epilepticus and required intensive continuous EEG monitoring in the intensive care unit with administration of multiple medications before her seizures could be controlled. She has however never been seizure-free, has frequent seizures every week which contributes to her poor quality of life.

On January 11, 2016, [REDACTED], MD, the Petitioner's primary care physician, transmitted to THC by facsimile a referral for the Petitioner to see [REDACTED], MD, a pediatric neurosurgeon at the University of Michigan, on January 14, 2016. On a University of Michigan form included in the facsimile transmittal, Dr. [REDACTED] said that the reason for the consultation was "intractable seizure disorder."

Dr. [REDACTED] is a "non-affiliated provider," i.e., he has not contracted with THC to provide services to its members. In order for the Petitioner to be seen by Dr. [REDACTED], the referral must meet certain criteria, including prior authorization by THC, as explained in the certificate (pp. 47, 48-49):

ARTICLE VI. EXCLUSIONS AND LIMITATIONS

* * *

The following criteria must apply for a Member to receive Authorized Benefits and Services from a Non-Affiliated Provider:

- (1) An Affiliated Provider has referred you for Medically Necessary care; and
- (2) The service is an Authorized Benefit and Service but unavailable from an Affiliated Provider; and
- (3) The services have been Prior Authorized by the Plan; or
- (4) The services are received as the result of a Medical Emergency.

Absent the circumstances above, the services will not be covered, and you will have to pay the entire cost. See Section VII for requirements and the steps of the Prior Approval process. You also must pay for services you receive in excess of services approved.

* * *

ARTICLE VII. PRIOR APPROVAL / AUTHORIZATION REQUIREMENTS

Below are the general categories of services and supplies that require Prior Approval by the Plan:

* * *

- (4) Referrals to Non-Affiliated Physicians and Providers.

* * *

Non-Urgent Requests. Contact the Plan as soon as an Affiliated Provider recommends a service or supplies that require Prior Approval. In most cases, the Plan will approve, partially approve, or deny a request for Prior Approval within fifteen (15) days of receipt. In some cases we may ask for additional information or additional time in which to make our determination. Based on our approval or denial, you and your Provider can decide if you want to go forward with the proposed services or obtain the supplies.

THC completed its review of the referral request within 15 days and responded to the Petitioner's mother on January 26, 2016:

This communication is to notify you that your request for a referral to [REDACTED] MD, Neurological surgery at the University of Michigan, is denied. Unfortunately, Dr [REDACTED] MD is not a participating provider with Total Health Care. Your plan does not include benefits for out of network services when services are available in the network.

That letter also included a list of affiliated providers that presumably could perform the consultation the Petitioner sought at the University of Michigan.

After receiving this denial, the Petitioner's parents appealed to THC. In a March 3, 2016, letter to THC they wrote:

Please accept this letter as [an] appeal [of the] decision to deny coverage for an epilepsy surgery evaluation, from an out of network physician / provider. It is my understanding, based on your letter of denial, dated January, 26, 2016, that this procedure has been denied because: Dr. [REDACTED] MD, is not a participating provider with THC, and our plan does not include out of network services when services are available in network.

As you know, [the Petitioner] was diagnosed with medically intractable seizures, despite being on multiple anticonvulsant medications at high doses with many side effects. She has also been on a ketogenic diet, and currently has a vagus nerve stimulator (VNS) implant. [She] also has the condition of panhypopituitarism, developmental delay, and currently overweight, all in which have contributed to, and / or are effected by her epileptic condition and medications. Currently, Dr. [REDACTED] MD, has stated that [our daughter] needs an epilepsy surgery evaluation, where a functional imaging magneto encephalography (MEG), high resolution MRI, and prolonged inpatient video EEG monitoring can be performed at an established level IV Comprehensive Epilepsy Center. This evaluation, with the services stated, may show that [she] may be a candidate for epilepsy surgery, which could better improve, or perhaps eliminate the frequency of epileptic events, which continue to affect her quality of life.

We have continued to acquire approval for [the Petitioner] to get an evaluation from Dr. [REDACTED] MD, currently having all of the above mentioned services / facilities, at the University of Michigan Medical Center. We are aware that this provider / facility is out of network for our plan. Upon multiple requests / searches we have not been informed, or have found on our own accord, a provider (pediatric neurosurgeon), along with the needed facilities, that are able to perform the stated procedures mentioned above. Multiple requests, from us, for information on in network providers / facilities that have the available procedures mentioned above, have been made.

THC initially did not grant the Petitioner's request for an internal appeal. It was not until the Petitioner filed a complaint with the Department of Insurance and Financial Services (DIFS) in March 2016 that THC accepted the Petitioner's appeal and concluded the internal grievance process with a final adverse determination dated April 21, 2016, which said:

Based on the information received from [the Petitioner's] current physician Dr. Luat, the request for a Second Opinion at the University of Michigan is not covered as all in-network options have not yet been exhausted.

On May 4, 2016, the Petitioner's mother then filed her request for an external review of THC's final adverse determination with the Director. On the external review request form she wrote:

I put a request in to Total Health Care on 1/12/16 [sic] to go to an out of network hospital / doctor for my daughter for the care of her uncontrolled epilepsy. Currently, [she] is being seen at 2 in-network level 4 hospitals (St. John's and Children's in Detroit). THC does not have other level 4 (best epilepsy care) hospitals in-network. [My daughter] has exhausted all appropriate options through her insurance.

III. ANALYSIS

The Petitioner's parents want her to be evaluated at "an established level IV Comprehensive Epilepsy Center" to determine if she is a candidate for epilepsy surgery that might reduce or eliminate the seizures she experiences.

But the Petitioner is already being treated at a level 4 pediatric epilepsy center - Children's Hospital of Michigan, a THC affiliated provider. THC evidently would consider approving a referral to the University of Michigan if it comes from the Petitioner's current physicians at Children's Hospital.² As THC explained to the Petitioner's mother in its final adverse determination of April 21, 2016:

Included with your written complaint to DIFS was a letter from Dr. [REDACTED] Sivaswamy's office at the Children's Hospital of Michigan requesting an evaluation for [the Petitioner] at the Pediatric Neurology Center at the University of Michigan. Since this letter was not included with the initial request for referral, Total Health Care contacted Dr. [REDACTED] office at the Children's Hospital of Michigan to validate the letter as it was not dated. THC's Grievance Coordinator contacted the office and spoke with [REDACTED]. She was advised that Dr. [REDACTED] left the practice in November 2015 and [the Petitioner's] treating physician is Dr. [REDACTED]. Since there was no record of this letter in [the Petitioner's] file, [REDACTED] at Dr. [REDACTED] office requested a copy faxed to her attention and she will investigate. [REDACTED] indicated that at the current time there is no request on file from Dr. [REDACTED] for a second opinion at University of Michigan.

2. Dr. [REDACTED] of Saint John Hospital recommended a referral. He wrote on January 21, 2016: ". . . [A]t this point I'm recommending strongly that [the Petitioner] have an epilepsy surgery evaluation repeated and should be referred to University of Michigan Medical Center in Ann Arbor Michigan because they have more facilities such as functional imaging, magnetoencephalography, high resolution MRI and prolonged inpatient video EEG monitoring, and then the about [sic] is a level IV Comprehensive Epilepsy Center."

The Petitioner was evaluated at Children's Hospital on February 8, 2016, by [REDACTED], MD, a pediatric neurosurgeon. The Petitioner's condition was also discussed in an epilepsy surgery conference (which included her supervising physician, Dr. [REDACTED]) on April 11, 2016, at Children's Hospital. There is no documentation to show that as a result of these reviews a referral to the University of Michigan was necessary.

There is no basis for the Director to conclude that the Petitioner could not obtain care within THC's network of affiliated providers at this time.

V. ORDER

The Director upholds THC's April 21, 2016, final adverse determination.

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.

Patrick M. McPharlin
Director

For the Director.

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

Randall S. Gregg
Special Deputy Director