

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. 151077-001

United Healthcare Insurance Company
Respondent

Issued and entered
this 3rd day of February 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On November 30, 2015, ██████████ (Petitioner) filed with the Department of Insurance and Financial Services a request for an external review under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Petitioner receives health care benefits under a group plan underwritten by United Healthcare Insurance Company (UHC). The benefits are defined in UHC's *Choice Plus* certificate of coverage.

The Director notified UHC of the external review request and asked for the information used to make its final adverse determination. UHC furnished the requested information on December 2, 2015. The Director accepted the case for review on December 7, 2015.

The case involves medical issues so the Director assigned the matter to an independent review organization which submitted its analysis and recommendation to the Director on January 20, 2015.

II. FACTUAL BACKGROUND

The Petitioner has a history of back pain. After two years of unsuccessful treatment with massage therapy and medication, the Petitioner had epidural steroid injections in the lumbar area. The injections were administered on June 9 and June 23, 2015 by ██████████, a UHC network provider. The amount charged for each injection was \$997.00.

UHC denied coverage for the injections, ruling that they were not safe and effective treatment for the Petitioner's condition and were experimental, investigational, or unproven services not covered under the *Choice Plus* certificate of coverage.

██████████ subsequently billed the Petitioner for the injections.

The Petitioner appealed the denial through UHC's internal grievance process. At the conclusion of that process, on September 23, 2015, UHC issued a final adverse determination affirming its coverage denial. The Petitioner now seeks the Director's review of that adverse determination.

III. ISSUE

Did UHC correctly deny coverage for the Petitioner's epidural steroid injections?

IV. ANALYSIS

UHC's Argument

UHC's final adverse determination to the Petitioner stated that a UHC medical director, a doctor specializing in neurology, had determined that the injections were not a covered benefit:

According to your Benefit Plan, section 2 entitled: Exclusions and Limitations:

Section 2: Exclusions and Limitations

E. Experimental or Investigational or Unproven Services [p. 22]

Experimental or Investigational and Unproven Services and all services related to Experimental or Investigational and Unproven Services are excluded. The fact that an Experimental or Investigational or Unproven Service, treatment, device or pharmacological regimen is the only available treatment for a particular condition will not result in Benefits if the procedure is considered to be Experimental or Investigational or Unproven in the treatment of that particular condition.

* * *

This decision was made based on Epidural Steroid and Facet Injections for Spinal Pain, 2015T0004U. [The medical director's] determination is as follows:

Your doctor requested coverage for a shot into your back known as an epidural steroid injection (ESI) to treat your back pain. We carefully reviewed your medical records. We carefully reviewed your plan policy for this service. Your plan does cover ESI for acute and sub-acute back pain. Your records indicate you have discogenic back pain. ESI has not been shown to be safe and effective for this condition. Your health plan does not cover items or services that have not been shown to be effective. Therefore, the initial denial is upheld.

Petitioner's Argument

In his request for external review, the Petitioner wrote:

I have been suffering with [back pain] caused by inflammation. After two years of trying massage, anti-inflammation and oral steroids [REDACTED] suggested [epidural lumbar steroid injections]. The results have been great with 5 months of minimal pain and back to full activities.

In a visit summary dated April 29, 2015, [REDACTED] wrote:

[Petitioner] is a patient who I saw 1½ years ago for thoracic discogenic pain at T12-L1. Symptoms were right of midline. Bone scan showed the abnormality. He had chronic problems with aching, stiffness in the thoracolumbar junction region to the right of midline. We tried a steroid taper and anti-inflammatories. He had some...bright red blood per rectum while on Feldene so that was discontinued but he tolerated Relafen well. Unfortunately, the steroids, and anti-inflammatories did not seem to be of much benefit. Therapy was ineffective. He decided to live with the symptoms since they were not incapacitating but he has reached his tolerance.

He has no leg pain. He has no bowel or bladder dysfunction. Symptoms are right of midline at the thoracolumbar junction and he rates his pain 5 on a scale of 10 at worst.

* * *

IMPRESSION

Thoracic discogenic pain T12-L1

PLAN

I believe epidural injection could potentially provide him significant relief for several months and allow him to enjoy his summer golf season more. I would like to get an MRI scan of the lumbar spine with sedation and a follow up with him in the office. We could discuss the epidural injection at that time.

Director's Review

The question of whether the injections were experimental, investigational, or unproven for treatment of the Petitioner's condition was presented to an independent review organization (IRO) for analysis and as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a practicing physician who is board certified in anesthesiology and pain management and is familiar with the medical management of patients with the Petitioner's condition. The IRO reviewer's report included the following analysis and recommendation:

The member has chronic low back pain, which does not radiate. Diagnostic studies suggested discogenic pain at the levels of T12-L1 and L1-2. The member received 2 transforaminal epidural steroid injections, which provided 60 to 70% pain relief for a sustained period of time.

[R]ecent guidelines report only "fair" evidence of short-term benefit from epidural steroid injections for lumbar discogenic pain. [Citation omitted.]...[T]here is also no literature supporting epidural injections for thoracic discogenic pain.... [A]nother review did not find substantial peer reviewed evidence to support epidural injections for discogenic pain in the lumbar spine. [Citation omitted.]...[T]here is also a paucity of data to support epidural steroid injections for thoracic discogenic pain.

Pursuant to the information set forth above and available documentation...the epidural steroid injection and related services that the member received from 6/9/15 to 6/23/15 were experimental/investigational/unproven for treatment of his condition.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the 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. In addition, the IRO’s recommendation is not contrary to any provision of the Petitioner’s coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO’s recommendation should be rejected in the present case, finds that the injections were experimental, investigational, and unproven for treatment of the Petitioner’s condition.

Finally, UHC wrote in the final determination that the Petitioner was responsible for the total costs of the services. However, in its Explanation of Benefits form UHC included this notice:

A network provider may not bill you unless you gave written permission before you received the service.

In this case, the Provider was a part of the UHC provider network. It is not clear from the records submitted for this review whether the Petitioner, prior to receiving the injections, agreed in advance to pay for them. It is possible, therefore, that the provider’s billing is prohibited by the terms of his provider contract with UHC. However, the Director does not have the authority under the Patients Right to Independent Review Act to prohibit the doctor from billing the Petitioner. Under the PRIRA, the Director is limited to determining whether an insurer has correctly processed a disputed claim. In this case, UHC’s claims decision was correct. Any dispute involving the provider’s billing is outside the scope of the Director’s authority.

V. ORDER

The Director upholds UHC’s final adverse determination of September 23, 2015.

This is a final decision of an administrative agency. Any person aggrieved by this order may seek judicial review no later than sixty days from the date of this order in the circuit court for the county where the covered person resides or 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:



Randall S. Gregg
Special Deputy Director