

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. 151568-001

United Healthcare Insurance Company,

Respondent.

Issued and entered
this 4th day of February 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for a reduction mammoplasty by her health care insurer, United Healthcare Insurance Company (UHC).

On January 5, 2016, she filed a request with the Director of Insurance and Financial Services for an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted, the Director accepted the request on January 12, 2015.

The Petitioner receives health benefits through a group plan underwritten by UHC. The Director immediately notified UHC of the external review request and asked for the information it used to make its final adverse determination. UHC provided its response on January 15, 2016.

To address the medical issue in the case, the Director assigned it to an independent medical review organization which provided its analysis and recommendation on January 26, 2016.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in the *UnitedHealthcare Choice Plus Certificate of Coverage* (the certificate).

The Petitioner requested coverage for a reduction mammoplasty. On October 16, 2015, UHC denied the request, saying the procedure was cosmetic and therefore excluded from coverage.

The Petitioner appealed the denial through UHC's internal grievance process. At the conclusion of that process, UHC affirmed its denial in a final adverse determination dated December 21, 2015. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did UHC correctly deny coverage for the Petitioner's breast reduction surgery?

IV. ANALYSIS

Petitioner's Argument

As part of her external review request the Petitioner wrote:

On July 6, 2015 I received a letter from United HealthCare stating that a request for reduction mammoplasty (code 19318) was eligible for coverage under my policy. . . . After meeting with [REDACTED], I was not comfortable with this doctor and his technics [*sic*] used for this procedure and consulted with another doctor, [REDACTED], M.D. [REDACTED] submitted the same information for the same procedure as [REDACTED], but United Healthcare came back on October 16, 2015 and said that this procedure was not covered under their plan. I submitted an appeal letter and that appeal came back denied as a final decision on December 21, 2015. United Healthcare will not explain why this procedure was originally determined covered and on a conference call on December 21, 2015 the review board did not have this original approval letter. They also seemed unwilling to look up the original letter using their own reference number. As stated in the letter from [REDACTED] this procedure is for medical reasons not cosmetic.

UHC's Argument

In its final adverse determination, UHC explained the reason for its denial:

We carefully reviewed the documentation submitted, our payment policies and the limitations, exclusions and other terms of your Benefit Plan, including any applicable Riders, Amendments, and Notices. We confirmed, however, that this service is not eligible for payment as you requested. You are responsible for all costs related to this service.

* * *

According to your Benefit plan, section entitled Exclusions and Limitations, subsection entitled Physical Appearance the following is excluded from coverage:

Breast Reduction except as coverage is required by the Woman's Health and Rights Act of 1998 for which Benefits are described under Reconstruction Procedure in Section 1: Covered Health services.

Based upon the plan provisions our administrative decision to deny coverage for this service is therefore unchanged. Our decision does not reflect any view about the appropriateness of this service.

Director's Review

The certificate, in "Section 2: Exclusions and Limitations" (pp. 20, 25), limits coverage for breast reduction surgery:

We will not pay Benefits for any of the services, treatments, items or supplies described in this section, even if either of the following is true:

- It is recommended or prescribed by a Physician.
- It is the only available treatment for your condition.

* * *

K. Physical Appearance

* * *

4. Breast reduction except as coverage is required by the *Women's Health and Cancer Rights Act of 1998* for which Benefits are described under *Reconstructive Procedures* in *Section 1: Covered Health Services*.

The certificate does cover "Reconstructive Procedures" (p. 15):

Reconstructive procedures when the primary purpose of the procedure is either to treat a medical condition or to improve or restore physiologic function. Reconstructive procedures include surgery or other procedures which are associated with an Injury, Sickness or Congenital Anomaly. The primary result of the procedure is not a changed or improved physical appearance.

Cosmetic Procedures are excluded from coverage. Procedures that correct an anatomical Congenital Anomaly without improving or restoring physiologic function are considered Cosmetic Procedures.

The question of whether the Petitioner's breast reduction is medically necessary was presented to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO physician reviewer is board certified in physical medicine and rehabilitation; has been in active for more than 12 years; and is familiar with the medical management of

patients with the Petitioner's condition. The IRO report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that the requested reduction mammoplasty is medically necessary for treatment of the member's condition.

Rationale:

The member's current bra size is documented to be 36G. The member complains of inframammary rashes, which have been treated with over-the counter medications. The member has been evaluated and treated by a chiropractor with insufficient correction of her symptoms. Findings on examination are documented to include bra strap grooving, asymmetries of the curvature of the member's spine and grade III breast ptosis. The member's plastic surgeon anticipates a 575 gram reduction from each breast. The MAXIMUS physician consultant indicated that the photographs provided for review support that the member has macromastia and shoulder grooving.

The American Society of Plastic Surgeon's (ASPS) guidelines state that "Based on the results of Level I and II Evidence, reduction mammoplasty has been proven effective at reducing macromastia related symptoms and improving postoperative quality of life. Insurance coverage criteria for symptomatic breast hypertrophy should be based upon documentation of as least two symptoms (see below) regardless of body weight or weight of breast tissue removed. The documentation of at least two symptoms is supported by a Level II, prospective study examining the medical necessity of reduction mammoplasty." These symptoms include chronic breast pain due to the weight of the breasts, intertrigo that is unresponsive to medical management, upper back, neck and shoulder pain, unspecified backache, acquired thoracic kyphosis, shoulder grooving from bra straps, upper extremity paresthesia due to brachial plexus compression syndrome secondary to the weight of the breast being transferred to the shoulder strap area, headache and congenital breast deformity. The physician consultant explained that the member satisfies these criteria as she has a well-documented chronic back pain, neck pain, shoulder grooving and intermittent intertrigo with the failure of topical medical management. The consultant also explained that the member's photographs are supportive of significant macromastia and shoulder grooving. Multiple medical evaluations provided for review confirm these findings. The physician consultant explained that the member has a functional problem that is directly related to her significant macromastia. The consultant also explained that breast reduction is a well-known procedure that directly addresses this functional deficit.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that the requested reduction mammoplasty is medically necessary treatment for the member's condition.
[Citations omitted]

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. The Director can discern no reason why that analysis should be rejected in the present case. Therefore, the Director adopts the IRO analysis and finds that breast reduction surgery is medically necessary to treat the Petitioner.

V. ORDER

The Director reverses UHC's December 21, 2015, final adverse determination. UHC shall immediately authorize and cover breast reduction surgery for the Petitioner. UHC shall, within seven days of authorizing the surgery, provide the Director proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Health Plan Division, toll free 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.

Patrick M. McPharlin
Director

For the Director:



Randall S. Gregg
Special Deputy Director