

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. 153856-001

United Healthcare Insurance Company
Respondent

Issued and entered
this 17th day of July 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On May 25, 2016, ██████████ (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 request was initially incomplete because required medical records were not submitted. The Director accepted the case for review on June 23, 2016 when the records were received.

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

The case involves medical issues so it was assigned to an independent review organization which submitted its analysis and recommendation to the Director on July 7, 2016.

II. FACTUAL BACKGROUND

The Petitioner has azoospermia (an absence of motile sperm in the semen) and has requested that UHC provide coverage for a biopsy of his testes. UHC denied the request.

The Petitioner appealed the denial through UHC's internal grievance process. At the conclusion of that process, UHC issued a final adverse determination dated May 16, 2016, affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Was UHC correct in denying coverage for the testes biopsy requested by the Petitioner?

IV. ANALYSIS

Respondents' Argument

In its final adverse determination to the Petitioner, UHC wrote:

Based on our review, according to your Benefit Plan, under the Section Exclusions and Limitations, the following services are not covered and this request for payment was processed correctly.

Reproduction

1. Health services and associated expenses for infertility treatments, including assisted reproductive technology, regardless of the reason for the treatment. This exclusion does not apply to services required to treat or correct underlying causes of infertility.

We do not Pay Benefits for Exclusions

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.

The services, treatments, items or supplies listed in this section are not Covered Health Services, except as may be specifically provided for in Section I: Covered Health Services or through a Rider to the Policy.

All Other Exclusions

1. Health services and supplies that do not meet the definition of a Covered Health Service – see the definition in *Section 9: Defined Terms*. Covered Health Services are those health services, including services, supplies, or Pharmaceutical Products, which we determine to be all of the following:

- Medically Necessary.
- Described as a Covered Health Service in this Certificate under Section I: Covered Health Services and in the Schedule of Benefits.
- Not otherwise excluded in this Certificate under Section 2: Exclusions and Limitations.

* * *

Based upon the plan provision(s), our administrative decision to deny coverage for this service(s) is therefore unchanged ...

Petitioner's Argument

In his request for external review the Petitioner wrote:

UnitedHealthcare denied my insurance claim for a biopsy of my testicles based on a meritless fertility and a medical necessary policy. I have an underlying and unknown medical condition that results in a symptom where my body does not produce sperm. I am not seeking fertility treatment nor am I interested or looking into having children. My medical condition could be life threatening including a substantial increased rate of cancer (increased risk of cancer among azoospermic men ...)

Furthermore, the underlying cause could be from testicular cancer, infection or disease ... My concern is not the symptom but the underlying cause. I need a biopsy to determine the cause of my medical symptom. The biopsy is not being performed nor could it be used for purposes of impregnation. Under the policy, United cannot exclude services required to treat or correct underlying causes of infertility.

Director's Review

The Petitioner argues that it is medically necessary to have a testes biopsy to determine if he is at risk for cancer or another harmful medical condition. This is a medical question. The Director assigned an independent medical review organization (IRO) to analyze that question, as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO reviewer is a physician who has been in active practice for more than 15 years and is board certified in urology. The reviewer is familiar with the medical management of patients with the member's condition. The IRO report included the following analysis:

[A] testicular biopsy in a male with azoospermia and infertility is performed to determine the cause of the infertility and determine whether there is any sperm production present for possible use in assisted reproductive technologies ... [T]he requested biopsy is not medically necessary to assess for risk of cancer or other medical conditions.

Pursuant to the information set forth above and available documentation ... the requested biopsy of the testes is not medically necessary to determine if the member has either an elevated risk of cancer or a medical condition that can cause harm. (The Role of Testicular Biopsy in the Modern Management of Male Infertility.

<http://www.sciencedirect.com/science/article/pii/S002253470565410>.

Testicular Biopsy. Its Use and Limitations.

<http://europepmc.org/abstract/med/3617269>. European Association of Urology Guidelines on Male Infertility: The 2012 Update.

<http://www.sciencedirect.com/science/article/pii/S0302283812005246>.

Male Reproductive Disorders and Fertility Trends: Influences of

Environment and Genetic Susceptibility.
[http://physrve.physiology.org/content/96/1/55.abstract.](http://physrve.physiology.org/content/96/1/55.abstract))

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 certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO's recommendation should be rejected in this case, finds that a biopsy of the testes is not medically necessary for treatment of a condition other than infertility, therefore, it is excluded under the terms of the certificate.

V. ORDER

The Director upholds UHC's May 16, 2016 final adverse determination. UHC is not required to provide coverage for a testes biopsy.

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 Michigan 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