

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. 145894-001

US Health and Life Insurance Company
Respondent

Issued and entered
this 10th day of February
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On January 20, 2015, ██████████, authorized representative of his 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.*

At all times relevant to this review, the Petitioner had health coverage under a group plan underwritten by US Health and Life Insurance Company (USHL). The Petitioner's benefits are described in USHL's *Preferred United Plans Group Certificate* (the certificate).

USHL was notified of the external review request and was asked to submit the information used to make its final adverse determination. USHL submitted the requested material and, on January 27, 2015, the case was accepted for external review. USHL furnished additional information on February 3, 2015.

This case presents an issue of contractual interpretation. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

On August 4, 2014, the Petitioner, a student at the ██████████, injured his hand and received initial treatment in the emergency department of ██████████ in ██████████. He was released from the hospital and was scheduled for surgery the next day at the same hospital. The hospital and physicians who treated the Petitioner were not a part of USHL's provider network.

USHL processed the claims for the August 4, 2014 emergency services at the in-network benefit level. The claims for the surgery and related medical services performed on August 5, 2014 were paid at the out-of-network benefit level.

The Petitioner appealed the benefit determination through USHL's internal grievance process. At the conclusion of that process, USHL issued its final adverse determination on December 12, 2014, affirming its decision. The Petitioner now seeks a review of that determination from the Director.

III. ISSUE

Did USHL correctly process, at the out-of-network benefit level, the claims for Petitioner's August 5, 2014 surgery?

IV. ANALYSIS

Petitioner's Argument

In the external review request, the Petitioner's father wrote:

US Health and Life billed the Emergency Room Services and the surgery as two separate incidents, each with [its] own maximum out-of-pocket limit. Due to the fact that the ER Services and the surgery were a result of one injury, the resolve being sought is for US Health and Life to bill the ER Services and the surgery as one incident, with one maximum out-of-pocket limit.

In a letter dated January 16, 2015, submitted with the external review request, the Petitioner's father wrote:

The injury to his hand occurred on the afternoon of August 4, 2014. He was transported via private vehicle to the closest hospital, due to the severity of the injury and blood loss.

During the emergency room treatment, hospital staff decided that emergency surgery was necessary. The hospital staff reported...that surgery would have to take place the following morning because the only qualified hand surgeon had just completed a series of surgeries over a 10-12 hour period and required rest prior to handling the reconstruction of his finger. His wound was stabilized and wrapped, and he was given pain medications. The staff recommended admitting him.

I attempted to contact Cofinity and US Health and life Insurance via the phone number on my insurance card. The message stated that it was after hours and that the web site should be utilized for additional information regarding network facilities. On the US Health and Life web site I discovered there were no network facilities listed in the state of [REDACTED].

Due to the inability to verify the network status of the insurance, the hospital staff gave instructions for [Petitioner] to return at 7:00 am so that surgery could take place as soon as the surgeon was available. [Petitioner] returned the next morning, August 5, 2014, and

surgery was completed. The only reason the surgery took place on the following day was due to the lack of a qualified surgeon to complete the delicate procedure of assembling the existing fragments of bone into a knuckle and finger to restore as much function as possible.

US Health and Life treated the emergency room visit as in-network and subject to the family deductible of \$3,000 as per policy provisions. The surgery was treated as a separate claim and a separate out-of-network deductible of \$6,000 was applied.

Due to the fact that the surgery was considered as emergency by the hospital staff, and the reason for the 8-10 hour delay was because the only qualified surgeon was unavailable, I made an appeal to US Health and Life for the surgery to be treated as the same incident as the emergency room visit.

The appeal was denied.

The basis of my request for this external review is as follows:

1. I believe the charges for all services and care received as a result of the accident on August 4, 2014 should be handled as a single "in network" claim, based on the terms and definitions below:
 - a. US Health and Life's "General Definitions" Article III, 3.36, states the definition of "injury" as:

"Injury shall mean only bodily injury sustained accidentally by external means, including such illness as results from an accident. All injuries sustained by a Covered Person in connection with any accident shall be considered one injury. The term "injury" shall not include any bodily injury sustained while engaged in any activity which violates any federal, state, or municipal statute, ordinance, or regulation, including the perpetration of a felony or misdemeanor, which is self-inflicted, or as a result of an attempted suicide."
 - b. All of the medical treatments provided...on August 4, 2014 and August 5, 2014 fall within the description of "Emergency" as per US Health and Life's Glossary of Health Coverage and Medical Terms:
 - "Emergency Medical Condition – An illness, injury, symptom or condition so serious that a reasonable person would seek care right away to avoid severe harm."
 - "Emergency Room Care – Emergency services you get in an emergency room."
 - "Emergency Services – Evaluation of an emergency medical condition and treatment to keep the condition from getting worse."
2. A conference call took place on December 31, 2014, with [REDACTED] (a claims adjuster of US Health and Life Insurance Company)...the agent representing the health insurance plan to our employer,...my wife, and myself. During this call, [REDACTED] stated, "If [REDACTED] had been admitted from the emergency room, this would be treated as one incident."

3. [Petitioner] was not responsible for the delay or lack of qualified surgeon to perform the emergency surgery. Since there was a continuous act of treatment under emergency circumstances, the result should be one claim under the "In-Network" benefits per terms of our insurance policy.

Respondent's Argument

In its final adverse determination USHL explained its decision:

The group insurance provides for deductibles, higher copays, and coinsurance for out-of-network benefits. The group insurance coverage provides certain benefits when the employee and dependents receive services from network providers and certain other benefits when they receive services from providers that are not in the network. The benefit amounts payable are based on the network status of the providers. Benefits are not based on the effort of the employees in attempting to obtain services from network providers or on the reasons they do not, such as an emergency. The insured is not required to use the services of any one particular provider.

In network and out-of-network benefits are different because of the discounts US Health and Life receives when an insured person receives treatment from a network provider. These discounts are not available from out of network providers. Policy benefits are based on whether a provider is in the network and provides a discount or is out-of-network. Benefits are not based on the availability of the providers....

Director's Review

The schedule of coverage requires annual payment of a \$3,000.00 in-network family deductible and a \$6,000.00 out-of-network family deductible before USHL begins to pay claims. Medical services obtained from non-network suppliers are covered at 70 percent of USHL's "reasonable and customary" amount, after the deductible has been met. The certificate's deductible and coinsurance requirements are detailed in the Schedule of Coverage which states:

In-Network benefits are based on the Preferred Provider Organization's approved amount. Out-of-Network benefits are based on the Reasonable and Customary amount. Benefits are determined after any applicable Deductible and Coinsurance, and are subject to Annual, Lifetime, and Other Maximums, General Exclusions and other applicable limitations.

The Petitioner's father argues that his son's ER services and subsequent surgery performed the next day should be treated as one incident and covered at the network benefit level with applicable network deductible and coinsurance. However, the certificate of coverage does not require that USHL provide network level benefits for the non-network services the Petitioner received on the day after his emergency department treatment.

The certificate allows network level benefits for the emergency services the Petitioner received from non-network providers. However, there is no similar provision for non-emergency treatment performed by providers outside of USHL's network. The Director finds USHL correctly processed the Petitioner's claims for his surgery and related medical services on August 5, 2014.

However, the Director notes that, in a letter dated January 23, 2015, USHL stated:

Please note that USHL was able to obtain a discount from the out-of-network providers and passed this discount on to the [REDACTED] reducing their costs.

Although [the high deductible health] plan selected by the employer requires the in and out-of-network deductibles to be calculated separately, USHL will, as a good will gesture, permit the amount applied to the in-network deductible...to be also applied to the out-of-network deductible. This will result in an additional payment to the medical provider of \$1,590.30.

V. ORDER

The Director upholds US Health and Life Insurance Company's December 12, 2014, final adverse determination. US Health and Life Insurance Company is not required to provide network level benefits for the Petitioner's hand surgery and related medical services provided on August 5, 2014.

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:



Randall S. Gregg
Deputy Director