

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 101817-001

v

Time Insurance Company
Respondent

Issued and entered
this 25th day of February 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 3, 2008, XXXXX, on behalf of his minor daughter XXXXX ("Petitioner") filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on December 15, 2008. The Commissioner notified Time Insurance Company of the external review and requested the information used in making its adverse determination. The information was submitted for Time by Assurant Health, which provides administrative services for Time's insurance policies.

The case presented a medical question so the Commissioner assigned it to an independent review organization which provided its analysis to the Commissioner on December 26, 2008.

II
FACTUAL BACKGROUND

The Petitioner's family purchased coverage with Time Insurance Company (policy #7301079) which became effective on January 9, 2007.

The Petitioner experienced pain in her side. She was examined and treated for kidney

stones and a urinary tract infection. Her treatment was provided by various doctors between January 16 and April 4, 2007. The Petitioner's parents sought coverage for this care. Time denied coverage, saying it was treatment of a pre-existing condition and therefore excluded from coverage. When the Petitioner appealed, Time reviewed the claims but upheld its denial. A final adverse determination was issued October 24, 2008.

III ISSUE

Was Time correct in denying coverage for treatment of the Petitioner's kidney condition?

IV ANALYSIS

Petitioner's Argument

The Petitioner's father says that his daughter's ailment was not understood, identified or diagnosed as a pre-existing condition when they obtained Time coverage. He says that the insurer did not provide notification that coverage was rescinded until four months after his daughter's treatment began which prevented them from seeking other coverage, if warranted.

Respondent's Argument

Respondent argues that Petitioner's medical condition was present prior to the date she began coverage with Respondent. Respondent says that the medical records demonstrate that the medical condition was a pre-existing condition as defined in the policy and Petitioner is therefore not eligible for coverage.

Commissioner's Review

The policy defines pre-existing condition:

A medical condition due to Sickness or Injury:

1. For which the Insured received medical advice, diagnosis or care of for which treatment was recommended or received from a provider within the 5-year period immediately preceding the Effective Date of coverage, regardless of whether the condition was diagnosed or not diagnosed; or
2. That produced signs or symptoms within the 5-year period immediately

preceding the Effective Date of coverage.¹

Section IV of the policy, Pre-Existing Conditions Limitation, states “[w]e will not pay benefits during Your Benefit Period for charges incurred due to a Pre-Existing Condition.”

In reviewing adverse determinations that involve medical issues, the Commissioner requests an analysis and recommendation from an independent review organization (“IRO”). The physician-reviewer in this case is certified by the American Board of Urology and is a member of the American Urological Association, the Society for Urodynamics and Female Urology, the American Urogynecologic Society, the International Continence Society, and the Society for University Urologists. The reviewer is published in peer-reviewed medical literature and textbooks and is in active practice.

The reviewer has examined the medical records and the arguments presented by the parties. The IRO reviewer stated:

It is the determination of this reviewer that the services rendered from January 16, 2007 through April 4, 2007 were related to a pre-existing condition. . . .

The [Petitioner] had been diagnosed with hydronephrosis on December 2, 2006 by renal ultrasound. The enrollee was seen by Dr. XXXXX for the diagnosis of hydronephrosis on or before December 19, 2006. The etiology of the hydronephrosis, a left distal calculus was confirmed on CT scan on January 16, 2007. . . .

Based on the events that transpired on and before the visits with Dr. XXXXX on December 19, 2006, the hydronephrosis and subsequent kidney stone were pre-existing. The reference articles confirm that ultrasound can be used to diagnose kidney stones. In the pediatric population, ultrasound is the first imaging study performed followed by a CT scan or voiding cystogram to identify the etiology of the hydronephrosis.

The Commissioner is not required in all instances to accept the IRO’s recommendation. However, the IRO recommendation is afforded deference by the Commissioner; it is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the

1. The five-year look back period for pre-existing conditions is prohibited by section 3406f of the Michigan Insurance Code

conclusion of the IRO reviewer and finds that the medical care in question was treatment of a pre-existing condition and is, therefore, not a covered benefit under the policy.

The Commissioner finds that Time Insurance Company correctly applied the provisions of the Petitioner's policy.

**V
ORDER**

The Commissioner upholds Time Insurance Company's adverse determination of October 24, 2008.

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 sixty 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 Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.