

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. 101138-001

v

John Alden Life Insurance Company
Respondent

Issued and entered
this 27th day of February 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 31, 2008, XXXXX, authorized representative for 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.* On November 6, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

This case required review by a medical professional. Therefore, the Commissioner assigned it to an independent review organization which submitted its analysis and recommendation on November 20, 2008.

II
FACTUAL BACKGROUND

The Petitioner is covered under a small group policy underwritten by John Alden Life Insurance Company (John Alden). He is being treated for prostate cancer at the XXXXX in XXXXX, a part of the XXXXX. Since his surgery, he has participated in the XXXXX's penile rehabilitation program. Part of the therapy is to increase blood flow to nerves that sustained injury from the surgery. This involves, among other treatments, administering fifteen 100 mg doses of Viagra per

month. This is a larger than normal dosage of the drug. John Alden denied coverage for the requested Viagra doses.

The Petitioner appealed the denial through John Alden's internal grievance process. John Alden maintained its denial and issued a final adverse determination letter dated October 2, 2008.

III ISSUE

Was John Alden correct in denying coverage for additional quantities of Viagra as part of Petitioner's rehabilitation following prostate cancer surgery?

IV ANALYSIS

In its final adverse determination, John Alden defended its decision to deny coverage stating that the requested drug "regardless of the quantity for the purpose of assisting blood flow to nerves remains within the Experimental or Investigational definition of the policy."

The John Alden policy in question defines experimental or investigational care in this way:

A service or supply is Experimental or Investigational when We determine that it is:

1. not of proven benefit for the particular diagnosis or treatment of a particular condition, as established by any of the reference compendia cited below; or
2. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
3. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Determining whether petitioner's treatment is experimental or investigational involves a medical question. For that reason, the Commissioner obtained an analysis of the medical issues from an independent review organization ("IRO") as required by section 11(6) of PRIRA. The IRO reviewer for this case is a physician who is board certified in urology. The reviewer holds an academic appointment and has been in practice for more than 10 years. The reviewer noted that "PDE inhibitors, such as Viagra, are good options for treatment of post radical prostatectomy

erectile dysfunction.” However, the reviewer also stated that “the use of PDE inhibitors in preventing erectile dysfunction and/or enhancing recovery from erectile dysfunction as a part of a penile rehabilitation program after radical prostatectomy has not been proven in randomized controlled trials.”

The reviewer concluded that Viagra is experimental/investigational for treatment of the [Petitioner's] condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. The IRO analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in this case. The Commissioner accepts the conclusion of the IRO that the requested medication is not medically necessary and, therefore, not a covered benefit under the Petitioner's policy.

V ORDER

The Commissioner upholds John Alden Life Insurance Company's final adverse determination. John Alden is not responsible for coverage of the requested medication.

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.