

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. 102298-001

v

Midwest Security Life Insurance Company
Respondent

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

ORDER

I
PROCEDURAL BACKGROUND

On January 6, 2009, 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 case was accepted on February 5, 2009.

The Commissioner notified Midwest Security Life Insurance Company (Midwest) of the external review on January 6, 2009, and requested the information used in making its adverse determination. The Commissioner received Midwest's response on January 14, 2009.

The case involves medical issues so it was assigned to an independent review organization which provided its recommendation to the Commissioner on February 19, 2009.

II
FACTUAL BACKGROUND

The Petitioner has health care coverage with Midwest Security Life Insurance Company (Midwest) under a group insurance certificate (the certificate).

The Petitioner received injections for pain on May 9, June 11, July 7, and July 28, 2008. Midwest covered the first two injections but denied coverage for the last two.¹

The Petitioner appealed and Midwest reviewed the claims. After the completion of the internal grievance process, Midwest did not change its decision and issued a final adverse determination dated November 7, 2008.

III ISSUE

Was Midwest correct in denying coverage for the Petitioner's injections?

IV ANALYSIS

Petitioner's Argument

The Petitioner had discectomies in 2004 and 2006 and has disk herniation at the L5 – S1 level of his spine which causes recurring pain in his lower back and left leg. XXXXX, DO, a pain management specialist, explained the need for the pain injections in a December 2008 note:

[The Petitioner] has a paracentral disk herniation at L5 – S1 and has had transforaminal injections four or five times which have helped him. His pain is typically at this time neuropathic pain mildly responsive to Norco and gabapentin. He has had S1 selective nerve root blocks. We have found that these procedures are ways to try to help [the Petitioner] with his persistent pain and eventually these treatments of choice will allow us to refrain from chemicals that can damage other organ systems. * * * Sometimes procedures seem excessive or don't fit into the overall theme of things, but there is a reason they are being done for therapeutic reasons and because they have the potential to improve [his] pain and overall outlook as well as level of function.

The Petitioner says he has tried everything to avoid further surgery, including physical therapy in 2004 which only worsened his pain. He does not understand why Midwest paid for two injections but not the following ones. He believes the injections are medically necessary attempts to provide pain relief.

¹ Both the Petitioner and Midwest's grievance committee say that two injections were denied. Midwest's final adverse determination, however, only refers to the denial of the July 28, 2008, injection. For the purposes of this review, the Commissioner assumes that both July injections were denied.

The Petitioner wants Midwest to cover the cost of his pain injections.

Midwest Security Insurance Company's Argument

In its final adverse determination, Midwest said that it denied coverage for the injections because they had not been shown to be medically necessary. The certificate excludes coverage for services that are not medically necessary (see paragraph 2 under "Limitations" on page 20).

The notes of Midwest's grievance committee, which reviewed the Petitioner's complaint, further explained Midwest's rationale for denying coverage:

- The Petitioner had not attempted physical therapy prior to the injections;
- Midwest's medical policy guidelines for epidural injections for spinal pain indicate the injections should only be done every other month; and
- The Petitioner was not getting more than 50% relief of pain that lasts six to eight weeks.

Commissioner's Review

In reviewing adverse determinations that involve questions of medical necessity or clinical review criteria, the Commissioner obtains a review and recommendation from an independent review organization (IRO). The IRO reviewer for this case is a physician in active practice; certified by the American Board of Anesthesiology, and a member of the American Society of Anesthesiology. The IRO reviewer recommended that Midwest's denial be overturned.

The IRO report said in pertinent part:

[The Petitioner] received treatment for his neuropathic pain with Norco and Gabapentin without relief. In the past he underwent physical therapy. The [Petitioner] stated that the pain worsened after physical therapy. His therapist advised him that physical therapy would not ease his pain. Neither the [Petitioner's] neurosurgeon nor his pain physician recommended physical therapy. In the past, the [Petitioner] received a series of lumbar epidurals and selective S1 root nerve blocks, which offered him some relief. The [Petitioner] recently received three (3) epidurals approximately one (1) month apart for treatment of his current problems. * * *

* * *

The use of lumbar steroid epidural blocks is a well recognized and acceptable medical practice. Approximately two thirds of patients receive pain relief following lumbar steroid epidural blocks. The number of blocks received and the timing of the blocks is controversial in the literature. Some

guidelines state that the blocks should be held to a maximum of four (4) to six (6) times per year and should be spaced at least one (1) to two (2) months apart. However, the number and spacing of blocks should be left up to the individual physician's clinical discretion. If a patient does not receive any pain relief following a block, subsequent blocks are controversial. In this case, the [Petitioner] did claim to have a greater than 50% pain reduction post block.

The care in [the Petitioner's] case for epidural steroid and/or facet did not deviate from the current standard of care. The [Petitioner] did receive the appropriate number of blocks with the proper spacing.

Recommendation:

It is the recommendation of this reviewer that the denial of coverage issued by Midwest Security Life Insurance Company for injections performed by XXXXX, DO...be overturned.

The Commissioner is not required in all instances to accept the IRO recommendation. However, the IRO reviewer's conclusion is afforded deference by the Commissioner because 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.

The Commissioner accepts the conclusion of the IRO reviewer and finds that Midwest incorrectly denied coverage for the Petitioner's pain injections.

**V
ORDER**

The Commissioner reverses Midwest Security Insurance Company's adverse determination of November 7, 2008. Midwest shall cover the Petitioner's pain injections in July 2008 within 60 days of the date of this Order and shall provide the Commissioner with proof of coverage within seven days of the date of coverage.

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.