

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. 101932-001

v

Humana Insurance Company
Respondent

Issued and entered
this 12th day of March 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 11, 2008, 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 accepted the request on December 18, 2008.

The Commissioner notified Humana Insurance Company (Humana) of the external review and requested the information used in making its adverse determination. The Commissioner received Humana's response on December 17, 2008.

Because this case involves medical issues, the Commissioner assigned it to an independent review organization which provided its analysis and recommendation to the Commissioner on March 4, 2009.

II FACTUAL BACKGROUND

The Petitioner receives health care benefits under a group policy issued by Humana. The certificate of insurance (the certificate) defines the Petitioner's benefits. According to Humana, the Petitioner's coverage ended on January 31, 2008.

The Petitioner was assaulted in 2004. She sustained head, neck, back, and leg trauma and was left with chronic pain. Among other therapies and treatments, her physician prescribed the use of a Migun thermal massage bed to alleviate pain and facilitate range of motion. Between October 7, 2006, and March 25, 2008, the Petitioner had 176 sessions at XXXXX Migun, each approximately ½-hour long. The total cost of this care was \$3,286.00 (discounted from \$4,400.00).

Humana denied coverage for the Migun massage bed therapy and the Petitioner appealed. After the Petitioner exhausted Humana's internal grievance process, Humana maintained its denial and sent its final adverse determination letter dated October 30, 2008.

III ISSUE

Was Humana correct in denying coverage for the Petitioner's Migun massage bed therapy?

IV ANALYSIS

Petitioner's Argument

The Petitioner's physical therapist, XXXXX, PhD, PT, wrote in support of the Petitioner in a May 1, 2008, letter to Humana:

[The Petitioner] was transferred to our office by Dr. XXXXX (Physiatrist) for injuries sustained during an assault. She was treated for Lumbago (724.2)/spinal pain with related right shoulder, left leg and knee pain. She sought further treatment with the Migun approach. The Migun approach can be categorized as Therapeutic Neurological Re-education 97112, Massage 97124 and Heat 97010. * * * Each Migun treatment involves the

3 codes of therapeutic activity for each visit – emphasis for various trigger points may vary based on key complaints at the time.

Dr. XXXXX also said in an undated letter submitted for this external review that the Migun approach is physical therapy because it is “provided under medical supervision (prescription), chiropractic supervision (direct in the room) and physical therapy supervision (on site as needed to problem solve to get maximum results.”

The Petitioner believes the Migun therapy she received under CPT codes 97112, 97124, and 97010 is physical therapy and is therefore a covered benefit under the certificate.

Humana's Argument

In its final adverse determination, Humana gave its reasons for denying coverage for the Migun therapy:

The plan denied the appeal because massage beds are considered a comfort item and are not covered under the policy. Physical therapy must be provided by a healthcare practitioner to be covered by the policy.

* * *

CPT codes are specifically defined by the American Medical Association (AMA). The services provided and billed must meet the requirements of the definition as set forth by the AMA. The CPT codes suggested by Dr. XXXXX, 97112, 97124 and 97010, are covered physical therapy codes under your plan. However, these codes are specifically required to have direct (one-on-one) patient contact between the patient and physician or physical therapist. The use of a massage bed does not indicate direct patient contact between a physician or therapist. Therefore, these CPT codes cannot be utilized to bill for massage bed services.

In addition, your plan requires therapy services to be provided by “health care practitioner.” As defined by your plan, a health care practitioner is professionally licensed by the appropriate state agency to diagnose or treat a sickness or bodily injury and who provides services within the scope of that license. Services received at Migun do not meet this definition and do not qualify for physical therapy coverage under your plan. Although [we] correctly indicated to you that physical therapy is a covered expense under your policy, a further review of the services in question revealed that these services are not defined or covered under your plan as physical therapy.

Humana concluded that the Migun was not physical therapy and not a covered benefit under the Petitioner's certificate.

Commissioner's Review

Because the question of medical necessity is presented, the Commissioner had the file reviewed by an independent review organization (IRO). The IRO reviewer is a physician who is certified by the American Board of Physical Medicine and Rehabilitation and the American Board of Electrodiagnostic Medicine; a diplomate of the National Spinal Cord Injury Association and the American Association of Electromyography; and in active practice.

The IRO report said:

The [Petitioner's] treatment over the past two-three years has been for chronic pain involving her paraspinal muscle area. The [Petitioner] regained normal strength in all four extremities, and range of motion is normal in all four extremities, according to her treating doctor. The [Petitioner] has continued working at her job full-time. Her treating doctor recommended psychotherapy from the standpoint of recovery of her psychological health directly related to the assault. It is likely that these issues will continue to be chronic and may in fact be lifelong, according to her treating doctor. One of her treating doctors felt that she may have long-term physical and emotional effects from this assault.

The Migun Thermal Massage Bed design applies heat and pressure to the muscles along the spine causing massaging of the muscles and tendons around the spine to relieve tension, relax nerves, and facilitate blood flow, according to the Migun website.

The Migun Thermal Massage Bed is not considered to be medically necessary for treatment of the enrollee's condition. This bed provides heat and massage to her muscles along her spine from her neck to her tailbone area, and is self-directed, and performed by the patient at home, alone.¹ Use of this bed is not considered physical therapy treatment. Use of this bed does make her feel better temporarily for one (1) to two (2) days, and would be considered a convenience item or feel-good item, similar to a hot tub or whirlpool. Similar types of massage devices that provide heat and massage can be purchased in stores...by the public and anybody wanting their muscles to feel better temporarily. This massage bed does not involve the need of a physical therapist, and is not physical therapy treatment. [The Petitioner] is far beyond acute treatment for her original medical problems as a result of the assault, and now she is obtaining maintenance treatment to keep her chronic pain under better control at home while she continues working a full-time job.

¹ Although the record was somewhat unclear, the Commissioner concluded that the Petitioner used the Migun massage bed at a facility and not in her home. The IRO reviewer's reasoning, however, applies for either location.

CPT codes have been used to bill medically for the use of this bed, and these are listed as 97112: Therapeutic Neurological Re-education, 97124: massage, and 97010: hot/cold therapy. These codes are specifically required to have direct one-on-one patient-physical therapist contact in order to be appropriately billed as physical therapy. The use of a thermal massage bed does not require direct one-to-one patient-therapist contact. No professionally licensed health-care provider is need to use this massage bed, and does not qualify as physical therapy.

Recommendation:

It is the recommendation of this reviewer that the denial of coverage issued by Humana Insurance Company for the Migun Thermal Massage Bed [be] upheld.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO reviewer's recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO reviewer's analysis is based on extensive experience, expertise, and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The Commissioner finds that the use of the Migun thermal massage bed is not physical therapy and therefore Humana is not required to cover it under the terms of the Petitioner's certificate.

**V
ORDER**

The Commissioner upholds Humana Insurance Company's October 30, 2008, final adverse determination.

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.