

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. 102499-001

v

Priority Health HMO
Respondent

Issued and entered
this 16th day of March 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On January 15, 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.* After a preliminary review of the material submitted, the Commissioner accepted the request on January 22, 2009.

This case required review by a medical professional. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its analysis on February 5, 2009.

II
FACTUAL BACKGROUND

The Petitioner's group health care benefits are defined in Priority Health's Point of Service certificate with coverage effective December 1, 2007.

The Petitioner has a history of masses and lumps in her breasts, and fibrocystic breast disease with proliferative changes. She has had several biopsies and a lumpectomy.

Petitioner's physicians discussed her history and agreed that prophylactic mastectomies were her best option to address these problems.

The Petitioner requested coverage for prophylactic mastectomies and reconstruction from Priority Health.¹ Priority Health denied the request. The Petitioner appealed the denial and exhausted Priority Health's internal grievance process. Priority Health issued its final adverse determination November 26, 2008. On December 17, 2008, the Petitioner proceeded with prophylactic mastectomies and breast reconstruction with prostheses.

III ISSUE

Was Priority Health's denial of coverage for prophylactic bilateral mastectomies correct under the terms of the Petitioner's coverage?

IV ANALYSIS

Petitioner's Argument

The Petitioner says that due to her history of problems with her breasts, she should be approved coverage for prophylactic mastectomies. She notes that four physicians have advised her that she should have the surgery as a preventive measure. In a letter dated January 8, 2009, Dr. XXXXX wrote:

[Petitioner] has been a long standing patient of mine for more than 6-7 years. She has had problems with complex ovarian cysts and uterine fibroids for some time and underwent a complete hysterectomy in 12/02. Her pathology at that time was consistent with pre-cancerous tissue. Needless to say that this weighed very heavy on her mind.

She now has been evaluated by both myself and a general surgeon for a similar problem for her breast disease and a recommendation for bilateral mastectomy with plastic surgery

¹ Priority Health alleges in its January 27, 2009, response to OFIR that the member does not qualify for review on the breast reconstruction surgery because she has not been through the internal grievance process on this issue. However, Dr. XXXXX's letter dated September 25, 2008, and received by Priority Health on October 2, 2008, clearly indicates that the request included the reconstruction surgery. However, in its response Priority Health does not address this portion of the request.

reconstruction was made. I support this decision and recommendation and feel that this is in the best interest of the patient. I personally feel that [Petitioner] has endured a lot over the past years and feel that this is an appropriate option for her and one that she is very comfortable with.

In a letter to Priority Health dated September 25, 2008, Dr. XXXXX of the XXXXX wrote:

Please accept this as a letter of preauthorization. . . . [Petitioner] is a forty-nine year old woman who presents with a history of multiple biopsies to the breast. One of which showed a high risk lesion. A recent ultrasound showed bilateral breast masses consistent with cysts. In putting this all together [Petitioner] and her husband are very interested in proceeding with prophylactic mastectomies and reconstruction and it is for this reason that I am writing this letter.

Dr. XXXXX, who performed Petitioner's breast biopsies, noted that she had proliferative changes in her breasts. He wrote in a letter of November 18, 2008, that "proliferative fibrocystic changes significantly increase the risk of the development of invasive breast carcinoma. In the literature this has been described as being four times that of the normal non-risk individual." Dr. XXXXX believes Petitioner's request should be considered since she is at high risk for the development of breast cancer.

The Petitioner argues that prophylactic mastectomies were medically necessary and she meets Priority Health's criteria. Therefore, Priority Health should provide coverage based on medical necessity.

Priority Health's Argument

Priority Health says that prior authorization is required for all inpatient services, and prophylactic mastectomies are not a covered benefit unless its medical criteria are met. These criteria are listed in Priority Health's medical policy 91508-R3 (Prophylactic Cancer Risk Reduction Surgery). Priority Health believes it properly denied coverage because the Petitioner did not have prior authorization and did not meet the criteria in its medical policy.

Commissioner's Review

The question of whether Petitioner's medical procedures were medically necessary was

presented to an independent review organization (“IRO”) for analysis based on the medical records and other written material provided by Petitioner and Respondent. The IRO reviewer is a physician certified by the American Board of Surgery, a Fellow of the American College of Surgeons and the International College of Surgeons. The reviewer is published in peer-reviewed medical literature and is in active practice. The following comments are excerpted from the reviewer’s report (which is attached to this Final Decision):

It is the determination of this reviewer that the available record does not support the medical necessity of bilateral prophylactic mastectomy with reconstruction as performed on December 17, 2008. [Petitioner] had proliferative fibrocystic changes without atypia on a recent biopsy.

According to evidence-based clinical research, [Petitioner’s] risk of breast cancer is one point three (1.3) times that of the general population in the setting of this diagnosis (proliferative fibrocystic disease without atypia). A family history of breast carcinoma is known to increase the risk of subsequent invasive carcinoma in all histologic categories of proliferative lesions. [Petitioner] has no personal or family history of early onset breast cancer and her diagnostic evaluation including clinical exam, ultrasound, and mammogram is without evidence of malignancy. Bilateral mastectomy with immediate reconstruction was not medically necessary based on the available medical records.

Women with proliferative breast disease (PD) have been observed to have an increased risk of breast cancer. This condition has been evaluated and the effect of PD on breast cancer has been assessed. The results of these studies have revealed that women with atypical hyperplasia (AH) had four point three (4.3) times the breast cancer risk of women without PD. In women with PD lacking AH, the relative risk is one point three (1.3). A family history (FH) of breast cancer increased breast cancer risk two point four (2.4) times. The joint occurrence of FH and AH had a strong synergistic effect on breast cancer risk. Therefore, AH is a reliable marker of increased breast cancer risk, but in the absence of atypical hyperplasia, as in this case, the [Petitioner’s] risk of breast cancer approaches that of the general population. Therefore, prophylactic mastectomy and reconstruction was not medically necessary in [Petitioner’s] case.

The Commissioner is not required in all instances to accept the IRO’s recommendation. However, the recommendation is afforded deference by the Commissioner since it is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no

reason why, in this case, the IRO reviewer's judgment should be rejected. Based on the IRO report, the Commissioner finds that the requested medical procedures were not medically necessary.

V
ORDER

The Commissioner upholds Priority Health's November 26, 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.