

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. 102979-001

v

Midwest Security Life Insurance Company
Respondent

Issued and entered
this 30th day of March 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On February 10, 2009, XXXXX, on behalf of her son 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 material submitted and accepted the request on February 18, 2009.

The Commissioner notified Midwest Security Life Insurance Company ("Midwest") of the external review and requested the information used in making its adverse determination.

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 2, 2009.

II
FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the certificate of group insurance (the certificate) issued by Midwest.

On August 10, 2007, the Petitioner underwent excision of right breast gynecomastia. The condition had been caused by trauma to the nipple area that resulted in persistent swelling and tenderness to the breast area. Midwest denied coverage for the procedure.

The Petitioner appealed the denial through Midwest's internal grievance process. Midwest reviewed the claim but maintained its denial and issued a final adverse determination on January 16, 2009.

III ISSUE

Is Midwest correct in denying coverage for Petitioner's August 10, 2007, surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner's mother states that their doctor called Midwest to get authorization for the surgery and it was approved with a \$1,000 deductible. She says it was only after the surgery was approved that the coverage was denied. She argues that Midwest should provide coverage.

Respondent's Argument

In its adverse determination, Midwest says that Petitioner's certificate of coverage includes a coverage limitation which indicates that the surgery petitioner received is not covered. The limitation states:

LIMITATIONS

The term "Covered Expenses" as used for this coverage shall be deemed not to include any of the charges which are described below:

* * *

- (49) Treatment of gynecomastia (abnormal breast enlargement in males).

Midwest argues that this exclusion precludes coverage for Petitioner's surgery.

Commissioner's Analysis

Petitioner's mother asserts that the surgery had been approved in a telephone conversation between Midwest and the office staff of the physician who performed the surgery. Under the Patient's Right to Independent Review Act ("PRIRA"), the Commissioner's role in this case is limited to determining whether Midwest has properly administered health care benefits under applicable statutes and the terms of the health plan's policy or certificate of coverage. Resolution of the factual dispute described by the Petitioner (what was said, or not said, during a telephone conversation) cannot be the basis of this decision because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements.

The independent review organization examined the medical records submitted in this matter and concluded that the surgery was not a cosmetic procedure and was medically necessary. The Commissioner accepts this conclusion. However, not all non-cosmetic, medically necessary procedures are covered under a certificate of coverage. In this case, the certificate of coverage explicitly excludes benefits for treatment of gynecomastia. For that reason, Midwest's decision to deny coverage was permissible.

**V
ORDER**

The Commissioner upholds Midwest Security Life Insurance Company's January 16, 2009, 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.