

STATE OF MICHIGAN
DEPARTMENT OF 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. 88561-001

v

Priority Health

Respondent

Issued and entered
This 27th day of May 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On March 17, 2008, XXXXX, on behalf of his minor 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.* After a preliminary review of the material submitted the Commissioner accepted the request on March 24, 2008.

Initially this case appeared to involve only contractual issues so the Commissioner did not assign it to an independent review organization (IRO) for review by a medical professional. However, upon further evaluation the Commissioner determined this case would benefit from a review by an outside expert and assigned it to an IRO. The IRO completed its review and sent its report to the Commissioner on April 21, 2008.

II
FACTUAL BACKGROUND

The Petitioner receives health care benefits as an eligible dependent under his father's group insurance coverage. Those benefits are defined in Priority Health's Certificate of Coverage (the certificate).

The Petitioner, born XXXXX, was diagnosed with strabismus, amblyopia, and esotropia, eye conditions that result in crossed and “lazy” eyes. On November 10, 2007 he began vision therapy with XXXXX, OD, to improve these conditions. Dr. XXXXX does not participate with Priority Health. The Petitioner’s parents requested coverage for treatment for the period from November 2007 through present; and future services through November 2009. Priority Health denied the request.

The Petitioner appealed. After the Petitioner exhausted the internal grievance process, Priority Health maintained its denial and sent its final adverse determination dated February 7, 2008.

III ISSUE

Was Priority Health’s denial of coverage for vision therapy correct under the terms of the certificate?

IV ANALYSIS

Petitioner’s Argument

At the Petitioner’s two-year check up, his primary care physician referred him to XXXXX, a neurological institute, for testing. The tests showed significant deficiencies believed to have been caused by a chronic ear infection. At that time, eye surgery was recommended. However, after contacting various agencies and performing some research on how best to treat the Petitioner’s conditions, his father decided on vision therapy. He says he chose vision therapy because it provides longer lasting results when compared to surgery. The Petitioner’s father said one of the consulting ophthalmologists told him that surgery would be a “cosmetic fix” that would make the Petitioner look normal but might never work and would need to be repeated multiple times in Petitioner’s lifetime.

Petitioner’s father believes, based on the fact that the Petitioner’s physician determined it was the best course of treatment and medically necessary, that Priority Health should cover

the vision therapy.

Priority Health's Argument

In its final determination Priority Health denied coverage because, "the requested services for Vision Therapy have been determined to be not a covered benefit." It is Priority Health's contention that the denial was appropriate because Petitioner received services from a nonparticipating provider without prior approval, that standard care for the Petitioner's condition was available from participating providers, and that vision therapy is specifically excluded from coverage.

Priority Health's decision is based on provisions in Sections 2 and 7 of the certificate which describe covered services and exclusions in the Petitioner's coverage:

Section 2. Obtaining Covered Services

A. Referral Care

* * * If the standard of care treatment (medically appropriate treatment) for your condition is not available from a Participating Provider, your PCP will ask Priority Health for approval to refer you to a Non-Participating Provider. All referrals to or services received from Non-Participating Providers (providers not listed in our provider directory) must be prior approved by us. Referral by your PCP is not sufficient for Coverage of services received from Non-Participating Providers. If you do not receive written approval from Priority Health prior to obtaining services from a Non-Participating Provider, you will be responsible for payment. [Underling in original]

Section 7. Exclusions from Coverage

* * *

The following is a list of exclusions from your coverage.

* * *

- (48) Vision Care. Services and supplies relating to vision care, including, among other things: eyeglasses, eyeglass frames, all types of contact lenses or corrective lenses, eye exercises, visual training, orthoptics, sensory integration therapy, radial keratotomy, laser surgeries and other refractive keratoplasties. Vision care is Covered only if you have a vision care rider to this certificate. Vision screenings are Covered as described in Section 6.A (1) (d). See Section 6.B (10) for eye care that is Covered. [Underlining added]

Priority Health says its Medical Policy No. 91538-R0 also indicates that vision therapy is

specifically excluded from coverage.

Priority Health also asked two outside experts, a board-certified optometrist and a board-certified ophthalmologist, to review the Petitioner's case. They concluded that vision therapy is not appropriate for the Petitioner because of his age and developmental delays. They opined that the standard of care for strabismus in the Petitioner's case would not be vision therapy but "correction of the refractive error patching for any amblyopia until there is alternate fixation and then surgical correction of the ocular deviation."

Priority Health approved a visual evoked potential test for the Petitioner from Dr. XXXXX but denied the Petitioner's request for ongoing vision therapy from the doctor. Priority Health says that the Petitioner elected to pursue therapy with Dr. XXXXX in spite of the denial.

Priority Health believes that its denial of coverage for the vision therapy was in accord with the terms of the certificate and should be upheld.

Commissioner's Review

One of Priority Health's arguments is that vision therapy is specifically excluded in the certificate, and the provision in Section 7 quoted above does exclude "orthoptics," the treatment of treating defective visual habits, defects of binocular vision, and muscle imbalance such as strabismus, by reeducation of visual habits, exercise, and visual training. However, the certificate, in Section 6, "Schedule of Covered Services," includes coverage some coverage for eye care:

- (10) Eye Care. Coverage is limited to medical conditions and diseases of the eye. See Section 7(48) for vision care services that are not Covered.

To help the Commissioner resolve the issue of the nature of the treatment under the terms of the certificate and whether vision therapy was appropriate, the matter was assigned to an independent review organization (IRO) for the recommendation of an expert. The IRO reviewing expert is certified in ophthalmology, holds an academic appointment, and is familiar with the medical management of patients with the Petitioner's condition. The IRO reviewer

determined that vision therapy falls within the category of vision care that is excluded in the certificate. The IRO report said:

The MAXIMUS physician consultant indicated that eye exercises, visual training and orthoptics are all excluded from coverage by [Priority Health's] contract. The MAXIMUS physician consultant explained that these terms describe the services provided by vision therapy. The MAXIMUS physician consultant also explained that the effectiveness of vision therapy in treating infantile esotropia and amblyopia has not been established with reliable peer reviewed studies. The MAXIMUS physician consultant indicated that the medical standard of care for treating this member's condition is patching the strong eye until equal vision is established as correction of the amblyopia and that the only established method for correction of this type of strabismus is muscle surgery with continued post-operative follow-up. The MAXIMUS physician consultant explained that the use of glasses and vision therapy will not correct amblyopia and esotropia. The MAXIMUS physician consultant also explained that the requested vision therapy clearly falls within the categories of "vision care" which are excluded from coverage by the...contract.

The IRO reviewer concluded that vision therapy falls within the category of vision care that is excluded under the terms of the certificate and also that the vision therapy is not the standard of care for the Petitioner.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner – it 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 therefore accepts the conclusion of the IRO and finds that the Petitioner's vision therapy is excluded under the terms of the certificate. In deciding that the Petitioner's vision therapy is excluded from coverage the Commissioner does not need to decide the issue of whether the services could be provided by a nonparticipating provider.

V ORDER

The Commissioner upholds Priority Health's February 7, 2008, final adverse determination in this case. Priority Health correctly denied coverage for vision therapy under

the terms of the certificate.

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 the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Commissioner