

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

xxxxxxx
Petitioner
v

File No. 103828-001

US Health and Life Insurance Company
Respondent

**Issued and entered
this 11th day of June 2009
by Ken Ross
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On March 17, 2009, xxxxx, RN, of xxxxx Health Care Company filed a request for external review with the Commissioner of Financial and Insurance Regulation on behalf of xxxxxx (Petitioner), under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it for external review on March 31, 2009.

Upon review the case was found to involve medical issues. The Commissioner therefore assigned the case to an independent review organization which provided its recommendation to the Commissioner on April 15, 2009.

**II
FACTUAL BACKGROUND**

The Petitioner has health coverage under a policy issued by US Health and Life Insurance Company (USHL). The policy does provide coverage for skilled nursing care but also excludes from coverage "[a]ny services or supplies that are not Medically Necessary." (Certificate, page 33).

Petitioner was admitted to xxxxxxxx, a nursing facility in xxxxxxxx, Michigan. The Petitioner had a diagnosis of dementia and a history of alcoholism, opioid dependence, chronic obstructive pulmonary disease, osteoarthritis, and depression. Claims were submitted to USHL for Petitioner's care at xxxxxxxx from July 26 through September 16, 2008.

Respondent denied coverage for this care and the Petitioner appealed the denial. USHL reviewed the claims and issued a final adverse determination on January 27, 2009.

III ISSUE

Did USHL properly deny coverage for the Petitioner's care at xxxxxxxx between July 26, 2008 and September 16, 2008?

IV ANALYSIS

Petitioner's Argument

The Petitioner's representative states that xxxxxx staff treated the Petitioner for edema in his lower extremities and significant weight loss. Petitioner was seen by a physician once a week and adjustments were made to his treatment plan. "Daily skilled nursing management and evaluation were needed to monitor for patient response to changes in treatment and to be alerted to possible declines in medical condition. . . ." (March 17, 2009, letter to OFIR Health Plans Division from xxxxxx.)

Respondent's Argument

USHL, in its final adverse determination, provided the following reasons why the claim was denied:

Based on an external review by a physician group it has been determined that dates of service July 26, 2008 through September 16, 2008 are custodial. There is no evidence that [Petitioner] had requirements for skilled nursing and was not receiving physical therapy or occupational therapy based on the records submitted. [Petitioner's] care was custodial and could have been provided as an outpatient.

Commissioner's Review

This case presented a question of medical necessity. The medical files were reviewed for the Commissioner by an independent review organization (IRO). The IRO physician who conducted the review is certified by the American Board of Psychiatry and Neurology with a subspecialty in Psychiatry. The reviewer is an Assistant Clinical Professor of Psychiatry at a University based School of Medicine. The reviewer is a member of the American Psychiatric Association and is in active practice. The reviewer provided the following observations and conclusions:

There is no evidence that the enrollee received active treatment other than for his edema. Both physician's and nurses' notes reflect an essentially static situation, with minimal medical/nursing interventions. There is no evidence that the enrollee was seen by an occupational therapist or a physical therapist. There is no clinical evidence that the enrollee was depressed, agitated, or severely demented.

The care the enrollee received was custodial in nature. Based upon the health plan's definitions of custodial care . . . and medical necessity . . . the enrollee was receiving care focused on activities of daily living and not recovering from an acute illness. He could have been treated safely and effectively on an outpatient basis. . . .

* * *

It is the recommendation of this reviewer that the denial issued by US Health and Life Insurance Company for the skilled nursing care from July 26, 2008 through September 16, 2008 be upheld.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO 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's analysis is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO that it was not medically necessary for Petitioner to receive skilled nursing care on the dates in question.

V
ORDER

Respondent's adverse determination of January 27, 2009 is upheld.

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.