

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. 104807-001

v

John Alden Life Insurance Company
Respondent

Issued and entered
this 15th day of June 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 8, 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.* On May 15, 2009, after a preliminary review of the material submitted, the Commissioner accepted the request.

This case required review by a medical professional. Therefore, the Commissioner assigned it to an independent review organization which submitted its analysis and recommendation on May 29, 2009.

II
FACTUAL BACKGROUND

The Petitioner is covered under a policy underwritten by John Alden Life Insurance Company (John Alden). In November 2008, she had surgery for a uterine septum, a medical condition that had caused her to have two miscarriages. John Alden denied coverage for the surgery.

The Petitioner appealed the denial through John Alden's internal grievance process. John Alden maintained its denial and issued a final adverse determination on April 8, 2009.

III ISSUE

Was John Alden correct in denying coverage for Petitioner's surgery?

IV ANALYSIS

John Alden based its decision to deny coverage on Section V (Pregnancy and Fertility Benefits) of Petitioner's certificate of group insurance which provides:

We will not cover charges:

* * *

2. For artificial insemination, in vitro or in vivo fertilization, or related services or procedures for the purpose or preparation of impregnation, including, but not limited to, ultrasounds and lab work.

The Petitioner responds that "I went through the surgery to be able to maintain a pregnancy and reduce my risk of another miscarriage. In no way, shape or form could this surgery have helped me to get pregnant, because I had been pregnant twice before." (Emphasis in the original.)

The nature of the medical procedure and its application to the insurer's exclusion was submitted to an independent medical reviewer for analysis. The IRO reviewer for this matter was a physician in active practice certified by the American Board of Obstetrics and Gynecology with a sub-specialty certification in Reproductive Endocrinology/Infertility. The reviewer is Director of a division of Fertility and Reproductive Endocrinology and an Associate Professor at a university based college of medicine. The reviewer is a Fellow of the American College of Obstetricians and Gynecologists and a member of the society for Reproductive Medicine. The reviewer concluded that:

... the surgery performed is considered medically necessary and the standard of care for this enrollee's condition. The surgery is also considered a treatment procedure for the purpose or preparation for an anticipated pregnancy; however, based on the . . . health plan language, the surgery performed is specifically excluded from coverage.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. The IRO analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in this case. It does appear that the procedure was only needed to increase the likelihood of a successful pregnancy. As such, it is a part of the preparation for impregnation and therefore excluded from coverage under section V(2) of the certificate of coverage.

**V
ORDER**

The Commissioner upholds John Alden Life Insurance Company's final adverse determination. John Alden is not responsible for coverage of the Petitioner's surgery.

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.