

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. 103173-001

v

Midwest Security Life Insurance Company
Respondent

Issued and entered
this 7th day of July 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On February 23, 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.* The Commissioner reviewed the material submitted and accepted the request on March 2, 2009.

The Petitioner receives health care benefits under her employer's coverage with Midwest Security Life Insurance Company (Midwest). The Commissioner notified 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 recommendation to the Commissioner on April 29, 2009.

II FACTUAL BACKGROUND

The Petitioner has a medical condition known as nodulocystic acne. She was treated by Dr. XXXXX on several occasions in 2008. Claims submitted to Midwest were denied. The Petitioner appealed Midwest's denial of coverage. Midwest's grievance committee reviewed the appeal but did not change its decision. The Petitioner exhausted Midwest's internal grievance process and received a final adverse determination dated February 16, 2009.

III ISSUE

Did Midwest correctly process the Petitioner's claims?

IV ANALYSIS

Petitioner's Argument

In her request for external review, the Petitioner wrote:

I do not agree with the charge amount from the doctor's office and the fact that the provider is asking me to pay for these charges when the claims should be resubmitted for proper coding and documentation.

Petitioner attached to her request several "explanation of benefit" forms covering services received from Dr. XXXXX between August 7 and December 11, 2008.

Respondent's Argument

In its final adverse determination, Midwest stated:

The documentation provided did not support that charge for the billing code 10040. This code was billed at a higher level of service that [sic] what was justified in the medical records. . . . Instructions for use are clearly presented in the introduction of the CPT book. Physicians are to select the procedure or service that "accurately identifies" the service performed. A CPT code that merely approximates the service provided is not to be selected.

This provider can resubmit these claims with the correct code for reprocessing.

Midwest says it processed the claims correctly according to the terms of Petitioner's policy.

Commissioner's Analysis

This case concerns the appropriate coverage for acne treatment provided by Petitioner's physician. Coverage in this case is determined by the type of care provided to Petitioner. All medical care is classified according to a numerical coding system compiled by the American Medical Association and published in its manual, *Current Procedural Terminology*. The codes in this manual are commonly referred to as "CPT codes" and are used by providers when claims are submitted to insurers.

The Petitioner was treated for her acne on August 7, August 21, September 4, September 18, October 2, October 30, and December 11, 2008. On each of these occasions, the doctor identified the procedure performed as CPT code number 10040. Midwest disputed the use of that code, saying it did not accurately reflect the actual care provided.

To assist the Commissioner in resolving this question, this matter was referred to an independent review organization (IRO) for analysis. The IRO's analyst was a physician certified by the American Board of Internal Medicine and the American Board of Dermatology. The reviewer is a member of the American Medical Association, the American Academy of Dermatology, the American College of Physicians, the American Society for Dermatologic Surgery, and the American College of Mohs Micrographic Surgery and Cutaneous Oncology. The reviewer is published in peer-reviewed literature and is in active practice. The reviewer's report includes the following observations and conclusions:

It is the determination of this reviewer that the treatment associated with CPT code 10040 (acne surgery) is a medically necessary procedure for the management of acne vulgaris; however, [Petitioner's] medical records only justify the use of CPT code 10040 for date of service October 30, 2008.

Acne surgery is a long standing and well accepted therapeutic option for acne vulgaris, particularly in patients who are already on medical therapy

or have a contraindication to medical therapy. CPT 10040 is well defined by the CPT manual. The descriptor is: Acne surgery – e.g., marsupialization, opening or removal of multiple milia, comedones, cysts, and pustules. For the bulk of the [Petitioner's] visits, the procedure notes do not indicate that this service occurred. The services performed on most of the dates were intralesional injections and cryotherapy. It is not proper coding to use code 10040 for either intralesional injections or cryotherapy. On date of service October 30, 2008, the medical record indicates that incision and drainage was performed, in which case, the use of 10040 may be justified.

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 expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

Therefore, the Commissioner finds that the October 30, 2008, procedure is properly coded as 10040 and should be covered by Respondent accordingly. With respect to the other dates of service coded by the provider as 10040, the Commissioner finds that Respondent was correct to deny payment since that code was apparently not an accurate reflection of the care actually provided.¹

V ORDER

The Commissioner reverses in part Midwest Security Life Insurance Company's final

¹ The Commissioner notes that the Petitioner complained in her request for external review about the doctor's apparent refusal to correct the CPT code in question and re-submit the claims. There is some evidence in the documents provided by Petitioner that the doctor did submit some re-coded claims. There is also evidence that Petitioner has been billed by her physician, Dr. XXXXX, for the charges that Midwest has declined to cover. The Commissioner does not have the authority under the PRIRA to resolve disputes between individuals and medical providers. However, the Commissioner notes that, because Dr. XXXXX is a participating provider in Midwest's network, he is required, under his contract with the network, to accept Midwest's payment as payment in full and is prohibited from balance-billing a Midwest subscriber for a covered service.

adverse determination of February 16, 2009. Midwest shall provide coverage for Petitioner's October 30, 2008, claim, coded as CPT number 10040. The remaining claim rulings are upheld.

Midwest shall comply with this Order within 60 days of the date of this Order, and shall, within seven days of compliance, provide the Commissioner proof it has implemented the Order.

To enforce this Order, the Petitioner must report any complaint regarding the implementation of this Order to the Office of Financial and Insurance Regulation, Health Plans Division, toll free 877-999-6442.

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.