

**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. 104865-001

v

Priority Health  
Respondent

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**Issued and entered  
this 9<sup>th</sup> day of July 2009  
by Ken Ross  
Commissioner**

**ORDER**

**I  
BACKGROUND**

On May 11, 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 18, 2009, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Commissioner notified Priority Health of the external review and requested the information used in making its adverse determination. The Office of Financial and Insurance Regulation received the information on May 22, 2009.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its analysis on May 29, 2009.

**II  
FACTUAL BACKGROUND**

The Petitioner is a member of Priority Health. Her health care benefits are defined in the Priority Health Certificate of Coverage and associated Riders.

The Petitioner has a history of osteoarthritis of the knees for over 20 years. She requested coverage for Supartz hyaluronic acid derivative injections (Supartz). Priority Health denied the request and the Petitioner appealed. At the conclusion of Priority Health's internal grievance process the Petitioner received Priority Health's final adverse determination letter dated April 28, 2009.

### **III ISSUE**

Did Priority Health properly deny the Petitioner coverage for Supartz injections under the terms of the certificate?

### **IV ANALYSIS**

#### Petitioner's Argument

The Petitioner states she has suffered from osteoarthritis in her right knee for 20 years. She has been receiving Supartz injections for the past five years and wishes to continue receiving these treatments. She requested that Priority Health provide coverage for continued Supartz injections. Petitioner argues she should be allowed to continue receiving Supartz injections and should not have to undergo a therapeutic trial with Euflexxa, as Priority Health has insisted she do. In her internal appeal dated April 14, 2009, Petitioner wrote:

Until the studies of Euflexxa . . . show why this course is beneficial, I would think that Priority Health would consider the best needs of their patients.

I would also like you to consider that these injections are not something new to me. I have been receiving Hylagen & Supartz for at least the past 5 years and according to our account manager since I have been receiving Hylagan/Supartz for more than 2 years I cannot be made to go through the trial of a new medicine. I am getting really tired of not being able to [do] much of anything [that] requires walking, or daily activities that I have been able to do.

Petitioner's orthopedic surgeon XXXX, M.D., in a letter dated April 3, 2009, wrote:

[Petitioner] has been a patient of mine for over a year. She suffers from arthritis in her right knee. Having tried both Hyalagan injection therapy and prescription Ibuprofen in the past, she was unable to find any relief from

her symptoms until trying Supartz injection therapy. [Petitioner] has had great results from the use of Supartz and wishes to continue this process. [Petitioner's] insurance, Priority Health, has recently implemented a policy where they will only reimburse for Euflexxa joint fluid therapy. This is troubling for many reasons: specifically this policy offers no choices and essentially dictates patients care, Euflexxa has no well controlled studies and unproven efficacy, there is less hyaluronic acid in Euflexxa than there is in Supartz, and there is a potential for an immune response to the Euflexxa.

The Petitioner contends that her Supartz injections are necessary given their success in treating her arthritis. She therefore wants Priority Health to provide coverage.

#### Respondent's Argument

Priority Health cites its prescription rider which includes this provision:

Covered outpatient prescription drugs may include some or all of the following:

Selected injectable drugs in certain categories, such as arthritis injections, growth hormone injections, hepatitis C injections, migraine injections and multiple sclerosis injections, which are self-administered or administered in a medical office or outpatient facility. These selected injectable drugs are Covered only under this rider and not the medical Certificate. Some injectable drugs require prior authorization from Priority Health and must be obtained from a participating specialty pharmacy. Information on Covered injectable drugs is available from our Customer Service Department or on our website at [priorityhealth.com](http://priorityhealth.com).

Priority contends that its Pharmacy and Therapeutics Committee reviewed hyaluronic acid derivatives, including Supartz and Euflexxa, and determined that:

No data is available which shows that Supartz is superior to Euflexxa in either outcomes of decreased adverse events. . . . With both Supartz and Euflexxa being equal in safety and efficacy, the P&T Committee concluded that, effective March 1, 2009, Euflexxa would be considered the preferred hyaluronic acid derivative as it is the most cost effective of the two products.

Priority Health states that Supartz is not a covered drug unless the individual had a documented therapeutic trial and clinical failure with Euflexxa. Priority Health argues that its denial was appropriate.

Commissioner's Review

The Priority Health certificate and drug rider provides coverage for Supartz but only after failing a trial of Euflexxa. In this case, the Petitioner argues that she should not have to go through a trial since she has tried and failed other medications. She also says because she has been taking Supartz for over a year it is now medically necessary for her condition.

A health maintenance organization like Priority Health that covers prescription drugs but limits coverage to drugs on a formulary must provide certain exceptions. Section 3406o of the Insurance Code (MCL 500.3406o) says:

An insurer that delivers, issues for delivery, or renews in this state an expense-incurred hospital, medical, or surgical policy or certificate that provides coverage for prescription drugs and limits those benefits to drugs included in a formulary shall do all of the following:

\* \* \*

**(c) Provide for exceptions from the formulary limitation when a nonformulary alternative is a medically necessary and appropriate alternative.** This subdivision does not prevent an insurer from establishing prior authorization requirements or another process for consideration of coverage or higher cost-sharing for nonformulary alternatives. Notice as to whether or not an exception under this subdivision has been granted shall be given by the insurer within 24 hours after receiving all information necessary to determine whether the exception should be granted. [Emphasis added]

In order to determine if Supartz (i.e., a nonpreferred drug) is “a medically necessary and appropriate alternative,” the Commissioner assigned the issue to an independent review organization (IRO) for analysis and recommendation. The review was conducted by a physician who is board certified in orthopedic surgery, holds an academic appointment, and has been in active practice for over ten years. The IRO reviewer recommended upholding Priority Health’s denial of coverage for the Supartz injections. In making this recommendation, the IRO reviewer observed:

- The medical records do not document a failed trial of Euflexxa.
- Euflexxa is similar to Supartz.
- There is no literature that demonstrates that Supartz is superior to Euflexxa in the treatment of degenerative joint disease of the knees.

- (Priority Health) requires a failed trial of Euflexxa before Supartz can be covered.

The IRO concluded that it is not medically necessary for Petitioner to receive Supartz injections rather than Euflexxa injections at this time and that Euflexxa should be tried in Petitioner's case.

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 and concludes that Priority Health's denial of Supartz was appropriate.

## **V ORDER**

The Commissioner upholds Priority Health's May 1, 2009, final adverse determination. Priority Health is not required to cover the Petitioner's Supartz injections at this time.

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.