

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

Petitioners

File No. 105234

v

**Molina Healthcare of Michigan,
Respondent**

**Issued and entered
this 29th day of July 2009
by Ken Ross
Commissioner**

ORDER

**I
BACKGROUND**

On May 27, 2009, XXXXX filed, on behalf of her infant sons XXXXX and XXXXX, 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.* (Use of the term "Petitioners" below refers collectively to Ms. XXXXX and her sons.) The Petitioners are members of Molina Healthcare of Michigan's Medicaid Plan. Their benefits are described in Molina's benefit guide book.

The Commissioner notified Molina of the external review and requested the information Molina used in making its adverse determination. The information was received on May 28, 2009. On June 3, 2009, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its analysis and recommendations on June 30, 2009.

FACTUAL BACKGROUND

XXXXX and XXXXX XXXXX were born prematurely at 33 weeks gestation at XXXXX. They both developed plagiocephaly while in the neonatal intensive care unit. Plagiocephaly is a condition in which the cranium is misshapen. Various non-invasive methods including positioning using pillows and physical manipulation of the head have been used in attempting to bring the boys' head to a more normal shape.

The boys' physicians recommended that they be fitted with cranial helmets to correct their plagiocephaly. Molina denied coverage and the Petitioners appealed the denial through Molina's internal grievance process. Molina declined to change its denial and the Petitioners received Molina's final adverse determination letters dated April 20, 2009.

III ISSUE

Did Molina properly deny coverage for the twins' cranial helmets?

IV ANALYSIS

Petitioner's Argument

After the twins were released from the hospital, a physician at XXXXX prescribed special pillows to treat their plagiocephaly. Later, the twins' primary care pediatrician provided Ms. XXXXX with a series of stretching exercises to be applied to the twins' necks to reduce shortening of their neck muscles. In February 2009, the pediatrician referred the twins to Dr. XXXXX, the chief pediatric neurosurgeon at XXXXX. On March 4, 2009, Dr. XXXXX prescribed a cranial helmet for each boy. Cranial helmets are orthotic devices which are designed to mold an infant's head into the correct shape. Cranial helmets are only effective during a child's early months before skull formation is complete. Cranial helmets are classified by insurers as durable medical equipment. The boys were fitted for these orthotics devices by XXXXX but on March 25, 2009, XXXXX notified Ms. XXXXX that Molina had denied coverage for the helmets.

Ms. XXXXX argues that the cranial helmets are necessary to treat her sons' plagiocephaly. Dr. XXXXX wrote that "[c]onservative measures including positional therapy have been attempted to improve the condition with minimal success. Reports indicated a 75%-80% success rate with the molding helmets."

Respondent's Argument

In its initial denial of coverage, a March 25, 2009, letter to XXXXX, Molina provided the following explanation for each of the twins:

Reason for the Denial

The information sent did not show:

- 1) head measurements greater than 12 mm of asymmetry (lopsided)
- 2) photographs or lead tape measurements showing moderate to severe plagiocephaly (twisted and lopsided head)
- 3) asymmetry greater than 6mm and failed trial of repositioning, physical therapy treatment, or the infant is not likely to improve due to the severity of the deformity

At the conclusion of its internal appeal process, on April 20, 2009, Molina issued separate final adverse determinations for each of the boys. In XXXXX's case Molina ruled that

The information does not show enough asymmetry (lopsided) and there is no documentation (clinical or office notes) of regular physical therapy. Your request was denied based on Molina Healthcare of Michigan Utilization Guideline for Cranial Orthotic Devices.

The doctor on the Appeal Review Committee that made this decision was a Pediatrician.

In XXXXX's case Molina ruled that

There is no documentation (clinical or office notes) of regular physical therapy and correct repositioning (laying on side of bulge eight to ten hours with a towel supporting back at night, tummy time three times a day with observation (watching). If the bulge gets worse XXXXX can be reevaluated (looked at) in two months). [sic] Your request was denied based on Molina Healthcare of Michigan Utilization Guideline for Cranial Orthotic Devices.

The doctor on the Appeal Review Committee that made this decision was a Pediatrician.

In its position paper of May 27, 2009, submitted to the Commissioner for this review, Molina stated:

The reason for the denial is that the information sent to Molina Healthcare of Michigan did not include documentation which showed: 1) head measurements greater than 12mm of asymmetry 2) photographs or lead tape measurements showing moderate to severe plagiocephaly 3) asymmetry greater than 6mm and failed trial of repositioning, physical therapy treatment, or the infant is not likely to improve due to the severity of the deformity.

* * *

The reason for the denial for XXXXX is that the information did not show enough asymmetry and there was no documentation of regular physical therapy. The reason for the denial for XXXXX is that there was no documentation of regular physical therapy and correct repositioning.

Molina argues that its denial was appropriate.

Commissioner's Review

This case requires the Commissioner to determine whether the cranial helmets were medically necessary and, if so, whether they are covered benefits under Molina's benefit guide. The Benefit Guide, page 13, provides: "Molina Healthcare covers medically necessary medical equipment." Because the helmets are durable medical equipment, they are covered benefits if they are medically necessary. Cranial helmets are covered orthotics in the Medicaid Provider Manual (pp. 48-49) for individuals under one year of age diagnosed with plagiocephaly.

Pursuant to section 11(6) of the PRIRA, MCL 550.1911(6), questions of medical necessity are referred by the Commissioner to an independent medical review organization (IRO) for analysis. In this case, the independent medical review was conducted by a physician who is certified by the Board of Pediatric Neurology, and has been in active practice for over 15 years. The reviewer also holds an academic appointment. The reviewer concluded that a cranial helmet was medically necessary for each boy. The reviewer recommended overturning Molina's denial of 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; 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 the IRO’s recommendation should be rejected in the present case. The IRO recommendation is consistent with the opinions of the twins’ physicians, including the senior pediatric neurosurgeon at XXXXX. Therefore, the Commissioner accepts the conclusion of the IRO and finds that a cranial helmet for treatment of each Petitioner’s plagiocephaly is medically necessary.

Molina has argued that its claims decisions should be controlled by its Utilization Guideline for Cranial Orthotic Devices. This is an internal Molina document, not available to its insureds and not part of any benefit guide. In fact, the Utilization Guideline itself states on each page, “[f]inal coverage decision is dependent on the member’s benefit, contract term and applicable state laws.”

Further, to the extent that the claims denials were based on the absence of physical therapy, it is noted that the Utilization Guideline provides that physical therapy “may also be recommended.” Thus, physical therapy is an optional therapy not a mandatory precondition to use of cranial orthotics.

Finally, the Guideline endorses cranial orthotics as one of three basic options for treating plagiocephaly. The other options are no therapy and repositioning therapy. The repositioning therapy initially employed was not successful and that was the reason that the treating physicians prescribed the cranial orthotics.

Given Molina’s less than compelling justification for denying the orthotic device requested by Petitioners, the Commissioner prefers to be guided by the recommendations of the independent medical reviewer.

**V
ORDER**

The Commissioner reverses Molina’s April 20, 2009, final adverse determination in this matter. Molina shall provide coverage within 60 days of the date of this Order and shall, within

seven days of providing coverage, provide the Commissioner with proof it has implemented this Order. To enforce this Order, the Petitioner may report any complaint regarding implementation 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.