

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. 108435-001

v

Aetna Life Insurance Company
Respondent

Issued and entered
this 21st day of January 2011
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On November 10, 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 accepted the request on November 18, 2009.

The Commissioner notified Aetna Life Insurance Company (Aetna) of the external review and requested the information used in making its adverse determination. The Office of Financial and Insurance Regulation received this information on November 19, 2009.

Because this case involved a medical issue, the Commissioner assigned it to an independent review organization which provided its recommendation to the Commissioner on March 3, 2010.

II FACTUAL BACKGROUND

The Petitioner has group health insurance coverage that is underwritten by Aetna. Her benefits are defined in the MI Open Choice PPO certificate of coverage (the certificate).

The Petitioner had a lipoprotein test on March 12, 2009. Aetna denied coverage for the test, saying it was excluded as a benefit under the terms of the certificate.

The Petitioner appealed Aetna's denial. At the conclusion of the internal grievance process Aetna maintained its denial and issued a final adverse determination dated October 22, 2009.

III ISSUE

Is Aetna correct in denying coverage for the Petitioner's lipoprotein test?

IV ANALYSIS

Petitioner's Argument

The Petitioner has a history of dyslipidemia and a family history of coronary disease. On March 12, 2009, she had a "Lipoprotein (a)" test, CPT code 83695.¹

The Petitioner's physician, XXXXX, MD, wrote a "To Whom It May Concern" letter dated October 9, 2009, in which he gave his reasons for ordering the test:

This is to certify that I am serving as cardiologist for [the Petitioner]. She has a family history of premature coronary disease, dyslipidemia, and a borderline blood pressure. For risk stratification, I ordered a lipoprotein A examination. This was found to be elevated. Consideration is being given to treatment with Niaspan. I feel that this test is important for risk stratification and also for ongoing monitoring and on this basis I feel the test is necessary and medically warranted.

¹ Aetna's internal clinical review says CPT code 83704, "quantitation of lipoprotein particle numbers and lipoprotein particle subclasses," was also performed on March 12, 2009.

It is the Petitioner's position that Aetna should cover the test because it was ordered by her physician and is medically necessary.

Respondent's Argument

In its final adverse determination of October 22, 2009, Aetna said it denied coverage because it considers lipoprotein testing ("Lipoprotein, blood; quantitation of lipoprotein particle numbers and lipoprotein particle subclasses") to be experimental and investigational for the Petitioner's condition. Aetna does not believe the medical literature supports the utility of these tests for screening, diagnosis, or management of coronary heart disease.

The certificate, under "General Exclusions" (pp. 23-24), excludes coverage for services that are experimental or investigational:

Coverage is not provided for the following charges:

* * *

- Those for or in connection with services or supplies that are, as determined by Aetna, to be experimental or investigational [*sic*]. . . .

Furthermore, Aetna says its "Clinical Policy Bulletin: Cardiovascular Disease Risk Tests" explicitly lists the test as experimental or investigational for assessing coronary heart disease risk.

Aetna argues that because the Petitioner's lipoprotein test was experimental or investigational it is not eligible for coverage.

Commissioner's Analysis

In order to answer the question of whether the Petitioner's lipoprotein (a) test was experimental or investigational, the Commissioner had the case file reviewed by an independent review organization (IRO). The IRO reviewer is certified by the American Board of Internal Medicine with a subspecialty in cardiovascular disease; is published in the peer-reviewed medical literature; and is in active practice.

The IRO reviewer concluded that the lipoprotein testing was experimental for the treatment of the Petitioner's condition. The IRO report said in part:

The current accepted guidelines for assessment and treatment of dyslipidemia is based on measurement of Total cholesterol, HDL, LDL and Triglycerides. Though determination of Lipoprotein subfractions including Lipoprotein (a) may be useful in predicting future risk of cardiac events, there is a paucity of data to prove their utility in regards in affecting clinical outcomes. There is no convincing data to suggest that by obtaining the information provided by Lipoprotein subfractionations, we would positively effect patient's outcome (i.e. decrease mortality or morbidity). It is because of this fact that the National Cholesterol Education Program (NCEP) guidelines do not include lipoprotein subfraction data for recommending treatment for dyslipidemia and doing so is not consistent with the standard of care.

Determination:

It is the recommendation of this reviewer that the denial issued by Aetna Health Insurance Company for Lipoprotein and Lipoprotein A testing rendered March 12, 2009, 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 the lipoprotein test the Petitioner underwent was investigational for diagnosis and treatment of her condition.

**V
ORDER**

The Commissioner upholds Aetna's adverse determination of October 22, 2009. Aetna is not required to pay for the lipoprotein test the Petitioner underwent on March 12, 2009.

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.