

**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. 108470-001

v

Molina Healthcare of Michigan  
Respondent

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**Issued and entered**  
**this 21<sup>st</sup> day of January 2011**  
**by Ken Ross**  
**Commissioner**

**ORDER**

**I**  
**BACKGROUND**

On November 12, 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.*

Molina Healthcare of Michigan (Molina) was notified of the request for external review and on November 13, 2009, furnished the information it used in making its final adverse determination. On November 17, 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 (IRO) which submitted its recommendation on December 10, 2009.

## II FACTUAL BACKGROUND

The Petitioner is a member of Molina and her health care benefits are described in Molina's benefit guidelines.

The Petitioner requested a McBride bunionectomy and partial nail avulsion on her left foot. Molina denied the request because the Petitioner did not meet its criteria for the procedures. The Petitioner appealed. At the conclusion of Molina's internal grievance process the Petitioner received the final adverse determination letter dated August 25, 2009.

## III ISSUE

Did Molina properly deny the Petitioner coverage for bunion surgery under the terms of her coverage?

## IV ANALYSIS

### Petitioner's Argument

The Petitioner says she has diabetic neuropathy and has suffered from back pain for over 20 years. She believes the pinching of the sciatic nerve could stem from the bunion area and is requesting a McBride bunionectomy and partial nail avulsion on the left foot, which she hopes will alleviate her back pain. In November 2008 she underwent a subtalar arthroereisis, tarsal tunnel decompression, and neurolysis of several nerves in the same foot.

In her request for external review the Petitioner said:

I have Diabetic Neuropathy and I have severe pinching of the sciatic nerve which I believe could be stemming from that bunion area along with the heel spur plus the lower back. I have suffered with this pain in excess of 20 years now and I dream of one day being without this horrible pain.

The Petitioner's surgeon, XXXXX, DPM, of the XXXXX Foot & Ankle Disorders, stated in a June 17, 2009, letter:

[The Petitioner] now needs one more surgery for the left foot for Metatarsus Primus Varus, (Bunion). The type of bunion is a McBride

Bunionectomy (procedure code 28292) and the diagnosis is, bunion left foot, (procedure code 730.0) and a minor procedure, Partial Nail Avulsion, Procedure code (11730) and Diagnosis is Ingrown Nail (703.0).

The Petitioner contends the bunionectomy is medically necessary to treat her condition.

She therefore wants Molina to provide coverage.

### Respondent's Argument

In its August 25, 2009, final adverse determination, Molina told the Petitioner its reasons for denying coverage:

There is no documentation (clinical or office notes) that shows a severe enough angulation (abnormal bend or curve) of the bones forming the bunion and that you have tried conservative treatment (example: padding, medicine injected in the bone). Your request was denied based on the InterQual criteria.

In an earlier denial on June 24, 2009, Molina gave more specific reasons for its denial:

**The notes sent did not include documentation of:**

- 1) pain and skin irritation (redness) at the first MTP (joint in the foot) that interferes with activities of daily living**
- 2) skin irritation/callus (hardened skin) at media MTP on exam**
- 3) Hallux valgus angle (angle of deformity in the foot) between 15-30 degrees, IMA (measurement angle of deformity in the foot) less than 12 degrees, PASA (angle in the foot) less than or equal to 8 degrees on x-ray**
- 4) continued pain/skin irritation after conservative treatment for at least 12 weeks (bunion padding, steroid injections, well fitted shoes)**

Molina's benefit guidelines require that services be medically necessary:

#### **Article II. Definitions**

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**2.18** Medically Necessary means the services, equipment or supplies necessary for the diagnosis, care or treatment of the Member's physical or mental condition as determined by the Medical Director in accordance with accepted medical practices and standards at the time of treatment.

\* \* \*

#### **Article VII. Covered Services & Coordination of Care Services**

**7.1 Covered Services.** The Member is entitled to the Covered Services specified in Appendix A when all of the following conditions are met:

\* \* \*

7.1.2 The Covered Services are Medically Necessary. Except as otherwise required by law, a Participating Provider's determination that a Covered Service is medically necessary is not binding on the Plan. Only Medically Necessary services covered by the Medicaid Contract are covered benefits.

Molina argues that the requested services do not meet its criteria and therefore are not medically necessary.

#### Commissioner's Review

This case requires the Commissioner to determine whether the bunionectomy is medically necessary. Questions of medical necessity are referred by the Commissioner to an independent medical review organization (IRO) for analysis. MCL 550.1911(6). The IRO review was conducted by a licensed podiatrist who has been in practice for over 15 years. The IRO reviewer recommended upholding Molina's denial of coverage for the bunionectomy.

The IRO report explained:

The MAXIMUS podiatrist consultant noted that the [Petitioner] underwent subtalar arthroereisis, tarsal tunnel decompression and neurolysis of multiple nerves in her left foot on 11/21/08. The MAXIMUS podiatrist consultant also noted that the [Petitioner's] podiatrist requested authorization for a left McBride bunionectomy and partial nail avulsion on 6/17/09. The MAXIMUS podiatrist consultant indicated that the records provided for review do not document complaints of pain to the first metatarsal joint by the [Petitioner] during examination. The MAXIMUS podiatrist consultant also indicated that these records do not describe the presence of a bunion. The MAXIMUS podiatrist consultant explained that there is no documentation of hypertrophic bone at the first metatarsal head or the results of a physical examination of the first metatarsal. The MAXIMUS podiatrist consultant also explained that there is no documentation of pathologic angles of the first metatarsal on x-ray. The MAXIMUS podiatrist consultant indicated that the near deviation of the member's first metatarsal (metatarsus primus varus) does not constitute the necessity for bunion surgery. The MAXIMUS podiatrist consultant also indicated that there was no documentation of pain at the first metatarsal joint or skin irritation or breakdown in the records provided for review. [Citation omitted] Therefore, the MAXIMUS podiatrist consultant explained that the information provided for review does not establish the medical necessity of the requested bunionectomy.

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.

Therefore, the Commissioner accepts the conclusion of the IRO and finds that Molina’s denial of bunion surgery was appropriate.

**V**  
**ORDER**

The Commissioner upholds Molina’s August 25, 2009, final adverse determination. Molina is not required to cover the Petitioner’s bunionectomy.

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.