

**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. 113459-001

v

Physicians Health Plan of Mid-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 July 12, 2010, 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 July 19, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

Physicians Health Plan of Mid-Michigan (PHP) was notified of the request for external review and furnished all of the information it had used in making its final adverse determination.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization (IRO) which submitted its recommendation on August 2, 2010.

**II**  
**FACTUAL BACKGROUND**

The Petitioner is a member of PHP. His health care benefits are defined in the certificate of coverage (the certificate) issued to Petitioner's employer.

Petitioner has a 20-year history of cervical spine and supraorbital pain related to migraine headaches. In the past he has utilized radiofrequency ablation to treat this condition and wishes to continue. Petitioner requested coverage for cervical radiofrequency ablation (RFA). PHP denied the request, asserting that the procedure is unproven.

The Petitioner appealed the denial through PHP's internal grievance process and received the final adverse determination letter dated June 4, 2010.

### **III ISSUE**

Did PHP properly deny the Petitioner coverage for cervical radiofrequency ablation under the terms of the certificate?

### **IV ANALYSIS**

#### Petitioner's Argument

In his request for external review, Petitioner explained that he wants PHP to continue its approval of coverage for RFA as they have done in the past. He says the 12 treatments thus far have been quite successful in treating his chronic pain.

In a letter to PHP, Petitioner's physician Dr. XXXXX wrote:

I am writing on behalf of [Petitioner] who has been under my care for the last decade or so. During that entire time he has suffered with intractable migraine headaches and depression and in fact he has been disabled since 1999 because of these two problems. He has seen Dr. XXXXX locally. He has also gone to the XXXXX Clinic in Chicago and has seen Dr. XXXXX in Ann Arbor.

Currently, the neurologist at the XXXXX of Michigan is treating him. That treatment has included: ablation of the cervical and of the supra orbital nerves. These treatments have provided him more relief than anything that has been offered to him either medically or procedurally over the last several years. While he has not been able to go back into the workforce, the temporary pain relief offered did allow him to be more active in maintaining the home and interacting with his children and wife.

At this time I do support that he undergo a repeat ablation of both the cervical and the bilateral supra orbital nerves. . .

Petitioner also included a November 4, 2009, letter from PHP in which it initially approved, “as an exception to your covered benefits,” cervical and supraorbital nerve pulsed radiofrequency ablation for dates November 5, 2009, November 19, 2009, and December 3, 2009. The same letter, however, denied coverage for future services.

Petitioner argues the treatments have proven to be successful in the treatment of his chronic pain and, for that reason, PHP should continue to provide coverage for RFA.

### Respondent’s Argument

In its June 4, 2010 final adverse determination, PHP denied coverage for the services:

The original decision to deny your request was upheld because Radiofrequency Ablation is considered unproven. Unproven services are specifically excluded from coverage.

PHP’s denial of coverage is based on these provisions in the certificate:

#### **Section 2: What’s Not Covered—Exclusions**

\* \* \*

##### **F. Experimental, Investigational or Unproven Services**

Experimental, Investigational and Unproven Services are excluded. The fact that an Experimental, Investigational or Unproven Service, treatment, device or pharmacological regimen is the only available treatment for a particular condition will not result in Benefits if the procedure is considered to be Experimental, Investigational or Unproven in the treatment of that particular condition. . . .

\* \* \*

#### **Section 10: Glossary of Defined Terms**

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**Unproven Services** – services that are not consistent with conclusions of prevailing medical research which demonstrate that the health service has a beneficial effect on health outcomes and that are not based on trials that meet either of the following designs.

- Well-conducted randomized controlled trials. (Two or more treatments are compared to each other, and the patient is not allowed to choose which treatment is received.)
- Well-conducted cohort studies. (Patients who receive study treatment are compared to a group of patients who receive standard therapy. The comparison group must be nearly identical to the study treatment group.)

Decisions about whether to cover new technologies, procedures and treatments will be consistent with conclusions of prevailing medical

research, based on well-conducted randomized trials or cohort studies, as described.

PHP argues that the requested services do not meet its criteria for coverage and therefore its denial was appropriate.

#### Commissioner's Review

In order to resolve the question of whether cervical radiofrequency ablation is unproven, pursuant to MCL 550.1911(6) the Commissioner obtained the recommendation of an independent review organization (IRO). The review was conducted by a physician who is board certified in physical medicine and rehabilitation and in pain management and has been in active practice for more than 12 years. The IRO reviewer recommended overturning PHP's denial of coverage for cervical radiofrequency ablation.

The IRO report explained:

[T]he [Petitioner's] cervicogenic headaches were diagnosed to be due to cervical facet joints by diagnostic injections with local anesthetic as well as his response to a previous cervical radiofrequency ablation. . . . [C]ervicogenic headaches most likely originate from the upper and mid cervical facet joints and are a common cause of headaches with or without superimposed migraine headaches. . . . [T]he cervical facet joints can be diagnosed as a contributor to cervicogenic headaches through diagnostic local anesthetic blocks and that this is a well documented as a standard of care intervention based on similar outcomes from the lumbar spine. . . . [T]he [Petitioner] already had a good response to cervical radiofrequency ablation [and] there is a record of positive relief with diagnostic anesthetic blocks to verify the diagnosis of cervicogenic headaches, which is required prior to consideration of radiofrequency ablation. . . . [R]adiofrequency ablation is indicated for treatment of the member's condition based on current standards of medical practice in pain management.

\* \* \*

[R]adiofrequency ablation is not unproven/investigational for treatment of the member's condition.

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 PHP’s denial of coverage for the cervical radiofrequency ablation was not unproven for Petitioner’s condition.

## **V ORDER**

The Commissioner reverses PHP’s June 4, 2010, final adverse determination in this matter. PHP 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.