

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

SF

Petitioner

v

XXXXX State University

Respondent

File No. 111648-001-

Issued and entered
this 31st day of January 2011
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 4, 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.*

The Petitioner receives health care benefits as an employee of XXXXX University, a self-funded group. The terms of the Petitioner's coverage are contained in XXXXX's *Enhanced Medical Plan Summary Plan Description* (the certificate). United Medical Resources, Inc. (UMR) is the third party administrator for the group and processes claims determinations under the certificate. Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Commissioner notified UMR and XXXXX of the external review and requested

information used in making the adverse determination. The Office of Financial and Insurance Regulation received the information on May 7, 2010. The Commissioner reviewed the information and accepted the request on May 11, 2010.

The case involves medical issues so the Commissioner assigned the matter to an independent review organization, which completed its review and sent its recommendation to the Commissioner on June 4, 2010.

II FACTUAL BACKGROUND

The Petitioner is 42 years old and has a history of left knee problems. Due to his medical history, Petitioner requested coverage for a surgical procedure known as an autologous chondrocyte transplantation (also known as autologous chondrocyte implantation). XXXXX denied the request. Petitioner appealed the denial through XXXXX's internal grievance process and received a final adverse determination issued by UMR and dated March 9, 2010.

III ISSUE

Did XXXXX/UMR properly apply the terms of Petitioner's certificate in denying authorization for an autologous chondrocyte transplantation?

IV ANALYSIS

Petitioner's Argument

In a March 29, 2010 letter, Petitioner's physician, Dr. XXXXX, explained why Petitioner should receive coverage for the surgery. In that letter, Dr. XXXXX asserted that the surgery is an appropriate treatment for the symptoms and diagnosis of Petitioner's knee condition. Dr. XXXXX asserts that Petitioner's condition meets the standards of medical necessity found in the certificate.

Respondent's Argument

In its final adverse determination, UMR gave the following reasons in support of the denial of

coverage:

The Plan defines **medically necessary** as: “services, procedures, and supplies that:

- Are consistent with the symptom or the diagnosis and the treatment of an illness or injury,
- Are required for the prevention, diagnosis, cure, or treatment of a health-related condition, including services necessary to prevent a decremental change in either medical or mental health status,
- Are provided in accordance with generally accepted medical practice and professionally recognized standards,
- Provide care safely given at the appropriate level of service,
- Are not experimental services, cosmetic services, maintenance care, or custodial care, and
- Are not provided solely for the convenience of the Plan participant or the provider.

In determining questions of medical necessity, consideration is given to the customary practices of providers in the community where the service is provided. However, the fact that a provider may prescribe, order, recommend, or approve a service or supply does not, of itself, make that service or supply medically necessary.”

The Plan also includes the following exclusion:

The following services and supplies are NOT covered by this Plan:

- Medically unnecessary services: services, which are not medically necessary to the care and treatment of any injury or illness, except where otherwise specified.

UMR employed Medical Review Institute of America Inc., an independent review organization to make a determination as to whether the surgery Petitioner requested was medically necessary. The MRIA report responded to three questions posed by UMR:

1. Is procedure the standard of care for the patient’s condition per Plan language?

No. ACI is a procedure that has limited indications based on well-conducted studies to date. One of the central criteria for medical necessity for ACI is that a single lesion is present in the knee. This patient has numerous mechanical problems in the left knee in addition to having two clinically significant areas of cartilage loss (medial and lateral femoral condyles).

2. Is procedure experimental/investigational per Plan language?

Yes. The procedure would be properly classified as experimental/investigational in this patient.

3. Is procedure medically necessary per Plan language?

No. Medical necessity requires that the procedure . . . not be classified as experimental/investigational.

UMR maintains that it took proper action in denying authorization and benefit coverage for Petitioner's proposed autologous chondrocyte transplantation as it is not an eligible expense under his Plan.

Commissioner's Review

The question of whether Petitioner's proposed autologous chondrocyte transplantation is medically necessary for the treatment of his condition was presented to an independent medical organization (a different IRO than the organization employed by UMR) for review. The IRO reviewer assigned to this case is board certified in orthopedic surgery and has been in practice for more than 15 years. The IRO report found that "there are no sufficient long-term outcome studies that demonstrate that safety and efficacy of Carticel autologous chondrocyte transplantation. . . . [M]ore studies of this procedure are needed to demonstrate its long-term safety and efficacy. . . ." The report concluded that the requested procedure is experimental/investigational for treatment of Petitioner's condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, a recommendation from the IRO 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 Commissioner accepts the IRO reviewer's conclusion and finds that the denial of coverage was appropriate in that the procedure was experimental and therefore not covered under the terms of the certificate.

**V
ORDER**

The Commissioner upholds XXXXX/UMR's March 9, 2010, final adverse determination. GVSU is not required to provide coverage for Petitioner's proposed autologous chondrocyte transplantation surgery.

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.