

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

v

File No. 111985-001

Priority Health

Respondent

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

ORDER

**I
BACKGROUND**

On May 25, 2010, XXXXX on behalf of her minor son 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 June 2, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Petitioner is a member of Priority Health. His health care benefits are defined in Priority Health's Certificate of Coverage (the certificate) and related Deductible Rider (the rider). Priority Health was notified of the request for external review and, on June 9, 2010, furnished the information used in making its final adverse determination.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's health care benefits. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

In November 2007, Petitioner had septoplasty surgery. Following this surgery, he was left with a complete obstruction of the left nostril and also developed a dorsal deformity on the left side of his nose. Petitioner's primary care physician Dr. XXXXX and his ear/nose/throat specialist Dr. XXXXX recommended Petitioner see plastic surgeon Dr. XXXXX for a reconstructive rhinoplasty. Dr. XXXXX is not a participating provider in the Priority Health network.

On October 27, 2009, Dr. XXXXX performed a combination septoplasty/rhinoplasty on Petitioner. Priority Health provided coverage for the surgery at the non-participating provider level. Priority Health paid \$754.98 of the surgeon's fee and Petitioner was responsible for \$754.98. (Priority Health paid \$4,473.04 and Petitioner paid a \$250.00 deductible for XXXXX Hospital's related care. This care is not in dispute.)

Petitioner requested that Priority Health provide 100% coverage of the surgeon's fees but Priority Health denied the request. The Petitioner appealed the denial of 100% coverage through Priority Health's internal grievance process and received the final adverse determination letter dated April 13, 2010.

III ISSUE

Did Priority Health properly process the Petitioner's claims under the terms of the certificate?

IV ANALYSIS

Petitioner's Argument

In her request for external review, Petitioner's mother explained the background which led to her belief that the septoplasty/rhinoplasty should be fully covered:

I was told by Dr. XXXXX's office that [Petitioner's] second surgery would be covered. Since the prior surgery had been covered at 100%, I assumed the second one would be also. Grievance and Appeal Coordinator, XXXXX, told me by phone on 3/25/10 that in their communication with doctors' offices about surgery, employees are trained to quote the full benefits allowed to patients, *including the percentage of coverage*. According to XXXXX at Dr. XXXXX's office, this was not done when she received authorization for [Petitioner's] surgery. She said this is never done in her contacts with Priority Health, and Priority Health also no longer sends out letters to confirm authorization for surgeries and give contact information. We were then very surprised and concerned to receive a statement of benefits on December 24, 2009, which made us responsible for half of the surgeon's fees.

While rhinoplasty and septoplasty are mentioned in Priority Health guidelines under "certain surgeries" that are only covered at 50% for physicians' fees, identification of coverage is not always that simple. The first surgery, for example, had a 14-word name: "bilateral sinus surgery with maxillary anstrostomies with septoplasty with right submucous resection of turbinate." The second surgery was to correct the negative outcome of the first (and was called "reconstructive rhinoplasty"). Language of this type is anything but clear to a layman. We believe Priority Health needs to make greater efforts to communicate the percentage of coverage for surgeries that are not fully covered.

Recently, while setting up the appeal hearing by phone with me on April 7, 2010, Grievance and Appeal Coordinator XXXXX told me that [Petitioner's] first surgery in 2007 *should not have been covered at 100%* for surgeon's fees, even though I had called and been told by a Priority Health benefits employee that it would be, and we were not billed for that surgery. XXXXX indicated that a mistake had been made by Priority Health at that time. . .This information further clouds the issue. How can we possibly address something that we were misinformed of, by Priority Health, that long ago? . . .

We maintain that the second surgery, for which there are ample medical records to demonstrate was performed to correct a very negative outcome of the first, should have been covered at 100% for all fees. This second surgery was a response to a prior, fully-covered surgery. Additionally, Priority Health has given contradictory and incomplete information about the coverage of these two surgeries. We request that Priority Health be required to cover the surgeon's fees of \$754.98 and the \$250 deductible, as both are expenses that stemmed from the previous, fully-covered surgery.

Respondent's Argument

In its April 13, 2010, final adverse determination, Priority Health denied 100% coverage for the services and stated that it "processed the claims appropriately in accordance with the

Schedule of Copayments and Deductibles, Deductible Rider, and Certificate of Coverage.”

Commissioner’s Review

The certificate of coverage (page 22) provides a general description of coverage for hospital care:

Hospital Care

Covered Services

* * *

- (c) Certain surgeries and treatments may be subject to an additional Copayment as set forth in the Schedule of Copayments and Deductibles and any rider to this Certificate. In all cases, these surgeries and treatments are Covered only when Medically/Clinically Necessary according to the criteria set forth in applicable medical policies.

The certificate’s “Schedule of Copayments and Deductibles” includes this provision:

Services	Benefits
<p>Certain Surgeries and Treatments (Physician fees only) * * *</p> <ul style="list-style-type: none"> • Reconstructive surgery * * * • Rhinoplasty 	<ul style="list-style-type: none"> • Physician fees are Covered at 50% of the first \$2,000.00 for each certain surgery or treatment, 100% thereafter. If applicable, any hospital services Copayment also applies.

The Deductible Rider states:

HMO – DEDUCTIBLE (MEDICAL)

The Schedule of Copayments and Deductibles of your Certificate has been amended to add the following:

Deductible (The amount of Covered Expenses you must incur during the Contract Year before benefits will be paid.)

Individual: \$2,000.00

Family: \$4,000.00 (but not to exceed the Individual Deductible per person)

Priority Health provided coverage for the surgery provided by Dr. XXXXX’s at 50%, paying \$754.98 which left Petitioner responsible for \$754.98 in coinsurance. Per the terms of the certificate, deductible rider, and applicable Michigan statute, Priority Health’s processing of the claims related to the 2009 septoplasty/rhinoplasty was correct under the terms of the certificate and rider.

**V
ORDER**

The Commissioner upholds Priority Health's April 13, 2010, final adverse determination.

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.