

**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. 116967-001

v

Unitedhealthcare Insurance Company  
Respondent

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**Issued and entered**  
**this 17<sup>th</sup> day of February 2011**  
**by Ken Ross**  
**Commissioner**

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On September 10, 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 (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the information and accepted the request on September 17, 2010.

The Commissioner notified Unitedhealthcare Insurance Company (United) of the external review and requested the information used in making its adverse determination. The Commissioner received United's response on September 23, 2010.

The issue in this external review can be decided by a contractual analysis. 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

On June 1, 2009, Petitioner began receiving group health benefits through his employer, XXXXX, Inc., under United's *Choice Plus* group policy.

On November 16, 2009, Petitioner obtained a pair of hearing aids from the Hearing Aid Centers of America, Inc. United denied coverage on the basis that hearing aids are specifically excluded under the terms of the policy.

On May 12, 2010, months after obtaining the hearing aids, Petitioner's wife contacted United to determine whether Petitioner's hearing aids would be covered due to the revised Americans with Disabilities Act of 2008. Petitioner says that he was originally told that the hearing aids are now a covered benefit, but was later told that it would not be covered until his policy renews on June 1, 2010.

Petitioner appealed United's denial of coverage for the hearing aids through United's internal grievance process. United upheld its original determination and issued a final adverse determination dated August 12, 2010.

## III ISSUE

Did United properly apply the terms of the policy in denying coverage for the hearing aids provided on November 16, 2009?

## IV ANALYSIS

### Petitioner's Argument

Petitioner believes United should provide coverage for the hearing aids because he was misinformed by its Customer Service representatives. In a letter to OFIR dated September 26, 2010, Petitioner wrote:

We learned that the Americans with Disabilities Act had allowed hearing aids to be covered by health insurance, after 10/3/09. We had purchased new hearing aids in December of 2009. We called United Healthcare (UHC)

Customer Service to inquire about coverage. The guidance we received from UHC Customer Service was that hearing aids were in fact covered and to send in our claim since we had purchased them after 10-3-09. It was only after having the claim denied that we were informed that UHC would cover hearing aids after the renewal date of the policy. Our renewal date is 6-1-10. We were misled [by] UHC Customer Service.

### Respondent's Argument

In its final adverse determination United gave the following rationale to support the denial of coverage for the hearing aids, stating in part:

According to your Benefit Plan, Section 2, the following is excluded from coverage, "Purchase cost and associated fitting and testing charges for hearing aids, Bone Anchor Hearing Aids (BAHA) and all other hearing assistive devices."

. . . Please note that hearing aids were not a covered benefit with your health plan until June 1, 2010.

\* \* \*

We show a call was received in May 2010 regarding the coverage of hearing aids. We apologize that the representative was not clear regarding the coverage of the hearing aids due to the Americans with Disabilities Act. Per the Americans with Disabilities Act, the coverage of hearing aids would be effective with the renewal date of the policy which was June 1, 2010. We apologize for any confusion or frustration you have experienced.

United asserts that it took proper action in denying coverage for the Petitioner's hearing aids, as it was excluded from coverage at the time they were obtained.

### Commissioner's Review

The certificate specifically excludes hearing aids from coverage. Petitioner argues coverage should be granted based on the amendments to the Americans with Disabilities Act and the fact that he was given misinformation by United representatives.

Under PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered health care benefits under the terms of the applicable insurance contract and state law. Resolution of the factual dispute described by the Petitioner cannot be part of a PRIRA decision because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements.

United's policy for June 1, 2009, explicitly lists hearing aids as an exclusion. United determined that coverage due to the amendments would not be approved until the contract renewed. In Petitioner's case, his contract did not renew until June 1, 2010. The provisions of the certificate are clear that there is no coverage for hearing aids under the Petitioner's certificate.

**V  
ORDER**

The Commissioner upholds United's August 12, 2010, final adverse determination. United is not required to provide coverage for hearing aids received on November 16, 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.

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Ken Ross  
Commissioner