

**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. 119411-001

v

Priority Health  
Respondent

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

**ORDER**

**I**  
**BACKGROUND**

On February 3, 2011, 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 is a member of Priority Health. Her health care benefits are defined in Priority Health's HMO certificate of coverage.

The Commissioner notified Priority Health of the external review and requested the information used in making its adverse determination. On February 7 and February 16, 2011, Priority Health furnished the information used in making its final adverse determination.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on February 24, 2011.

**II**  
**FACTUAL BACKGROUND**

In April 2010, the Petitioner had a prophylactic bilateral mastectomy and related breast reconstruction. Priority Health provided coverage for this surgery. The Petitioner later

concluded that the breast reconstruction had not been successful. She and her physician concluded that she needed breast reconstruction revision surgery November 1, 2010.

She requested coverage from Priority Health for the surgery. On October 15, 2010, Priority Health denied the request.

On November 1, 2010, Petitioner proceeded with the breast reconstruction revision surgery which was performed by Dr. XXXXX. Priority Health paid for the anesthesia and facility charges but denied coverage for the surgeon's charges.

The Petitioner appealed the denial through Priority Health's internal grievance process. Priority Health issued its final adverse determination letter December 9, 2010.

### **III ISSUE**

Did Priority Health properly deny the coverage for the surgeon's charges for breast reconstruction revision surgery under the terms of the certificate?

### **IV ANALYSIS**

#### **Petitioner's Argument**

Petitioner does not understand why Priority Health would provide coverage for the anesthesia and facility charges, but will not pay Dr. XXXXX for performing the surgery. She maintains that due to the complications she was experiencing, the revision was medically necessary.

In a note dated September 21, 2010, Dr. XXXXX wrote:

This patient has concerns about the position of her breasts. She says that she is very unhappy with the position of her breasts and this time despite being happy about the breast size. The patient notes that she has had no significant complications from her surgery but she notes that there is malposition of the inframammary fold regions. She feels that the implants are shifting inferiorly. The patient says that she is not in any significant pains at this time; she is not being limited by her breast implants from the standpoint of her activity.

PHYSICAL EXAMINATION: However, she indicates the inframmary fold region is being too low. On examination, I note that the patient's

inframammary folds are intact, the implants are at least D-Cup implants and they sit relatively well positioned on her anterior chest wall. If I were to be critical of the appearance of her breasts, I would say that given her large body size and chest wall size the folds maybe slightly lower and rounder than they were at the initial outset of her surgery, I would consider this malposition of the inframammary folds secondary to breast reconstruction for breast cancer.

ASSESSMENT AND PLAN: The best option for her would be to have reconstruction of the inframammary folds. I think given the large size of her implants the only viable option to keep these repaired would be to reconstruct them with Alloderm or Alloplastic type dermal material in an effort to maintain the position of the implant as best as possible. . . .

### Respondent's Argument

In its December 9, 2010, final adverse determination, Priority Health denied benefit coverage for the breast reconstruction revision surgery, stating:

[R]equested coverage will not be provided as [Petitioner] does not meet medical criteria as outlined in the Medical Policy 91545-R5 for Breast Related Procedures. Specifically, medical records do not evidence [Petitioner] has documentation by a treating physician that there were surgical complications such as cellulitis, other infections, lymphedema, hematoma, or significant skin or flap necrosis.

The Priority Health medical policy referenced in the adverse determination includes this provision related to breast reconstruction and revision:

This section applies to reconstruction and revision for breast cancer. It would also apply to women at high risk of breast cancer who require prophylactic mastectomy.

1. Coverage for the breast affected by cancer, as well as for the breast(s) removed prophylactically (including bilateral prophylactic mastectomies).

The following are covered benefits:

- a. Treatment for complications of breast reconstruction including cellulitis, other infections, and lymphedema.
- b. Revisions required by surgical complications including infection, hematoma or seroma, or skin or flap necrosis.
- c. Capsulotomies/capsulectomies for pain or contractures . . . .
- d. Prosthesis removal for pain, contractures, rupture, leakage or infection. . . .
- e. Scar revisions are only covered if one of the following apply:
  - i. The scar resulted from a serious complication such as infection or wound dehiscence from surgery or post-op period
  - ii. The scar revision is an integral (not incidental) part of another covered procedure

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5. The following are not covered benefits:  
Revisions for aesthetic/cosmetic reasons beyond the original reconstructive surgery unless there were surgical complications such as cellulitis, other infections, lymphedema, hematoma, or significant skin or flap necrosis. Examples of non-covered conditions would include nipple fading, loss of symmetry, for any reason, including tissue atrophy, after initial symmetry is achieved.

The Priority Health certificate of coverage, in section 6, excludes coverage for care which is not medically necessary:

Services and supplies that we determine are not Medically/Clinically Necessary according to our medical and behavioral health policies established by Priority Health with the input of physicians not employed by Priority Health or according to criteria developed by reputable external sources and adopted by Priority Health. If you disagree with us about Medical/Clinical Necessity, you (or your Participating Provider, if you wish) may appeal our determination as described in Section 11. But unless and until we agree with you that the services and supplies will be Covered Services, they will be excluded from Coverage.

If we exclude Coverage because a service or supply is not Medically/Clinically Necessary, that decision is a determination about benefits and not a medical treatment determination or recommendation. You, with a Participating Provider, may choose to go ahead with the planned treatment at your own expense.

The certificate defines “medically/clinically necessary” as:

The services or supplies needed to diagnose, care for or treat your physical or mental condition. The Medical Director, or anyone acting at the Medical Director’s direction, in consultation with your PCP or other Participating Physician, or, for Mental Health or Substance Abuse services, the Behavioral Health Department, determines whether services or supplies are Medically/Clinically Necessary according to Priority Health’s medical and behavioral health policies or adopted criteria that have been approved by community physicians and other providers. Medically/Clinically Necessary services and supplies must be widely accepted professionally by Priority Health’s network physicians as effective, appropriate, and essential, based upon nationally accepted evidence-based standards.

Priority Health argues that the Petitioner does not meet the medical necessity criteria of its medical policy for coverage; therefore its denial was appropriate. Priority Health has confirmed that claims for the anesthesia and facility charges for the November 1, 2010, surgery were paid. However, Priority Health states that these payments were made in error. Priority

Health states that it does not intend to recover the amounts paid because it was its own error that resulted in the payment.

Commissioner's Review

In order to answer the question of whether Petitioner's breast reconstruction revision surgery was medically necessary, the Commissioner obtained the recommendation of an independent medical review organization (IRO), as provided in section 11(6) of PRIRA, MCL 550.1911(6). The reviewer is a physician in active practice for more than 15 years who is board certified in plastic surgery. The reviewer's analysis includes the following comments (the complete report is provided to the parties with this Order):

[T]he note from the [Petitioner's] 9/12/10 visit stated that she was unhappy with the position of her breasts, but happy with the size. . . . [T]he [Petitioner] reported that there was a malposition of the inframammary folds. . . . [T]he [Petitioner's] plastic surgeon reported that the folds may have been slightly lower and rounder than they were at the initial outset of her surgery. . . . [T]he [Petitioner's] plastic surgeon proposed placement of some acellular dermal matrix in an effort to reconstruct inframammary fold. . . . [P]hotographs taken on 10/19/10 show that the [Petitioner's] implants were quite large and that they may have bottomed out. . . . [T]his may have been related to the size of the [Petitioner's] implants or the initial surgery. . . . [T]he [Petitioner's] implants were somewhat low relative to the position of the nipples prior to the revision. However, the results were cosmetically acceptable for the reconstruction procedure and given the size of the implants. . . . [T]he note from 9/21/10 reported that the [Petitioner] was not in pain and there were no significant complications from this surgery that would warrant a medically necessary revision procedure [citation omitted]. . . . [T]he breast revision procedure that the [Petitioner] underwent was cosmetic in nature.

The IRO reviewer concluded that Petitioner's November 1, 2010, breast revision was not medically necessary for treatment of her 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, and is supported by literature. The Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case.

The Commissioner finds Priority Health's denial of Petitioner's breast reconstruction revision was consistent with the terms and conditions of the certificate of coverage.

**V  
ORDER**

The Commissioner upholds Priority Health's December 9, 2010, final adverse determination. Priority Health is not required to provide additional coverage for Petitioner's breast reconstruction revision 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.

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Ken Ross  
Commissioner