

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 112107-001

V

Principal Life Insurance Company
Respondent

**Issued and entered
this 28th day of April 2011
by R. Kevin Clinton
Commissioner**

ORDER

I

PROCEDURAL BACKGROUND

On August 19, 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 Petitioner receives health care benefits through his employer under a health benefit plan underwritten by Principal Life Insurance Company (Principal Life).

Principal Life Insurance Company was notified by the Office of Financial and Insurance Regulation (OFIR) of the external review and requested to provide the information used in making its adverse determination. The information was received on August 24, 2010. The Petitioner's request for review was accepted on August 26, 2010.

The case involves medical issues so the matter was assigned to an independent medical review organization, which submitted its analysis to the Commissioner on September 8, 2010.

II FACTUAL BACKGROUND

On July 28, 2009, after receiving a colonoscopy, Petitioner was diagnosed with rectal cancer. Due to the detection of cancer, Petitioner's physician ordered a positron emission tomography (PET) scan that was provided on August 8, 2009. The charge for the PET scan was \$3,674.52. Principal Life denied coverage. Petitioner appealed through Principal Life's internal grievance process, but Principal Life upheld its original decision and issued a final adverse determination on June 28, 2010.

III ISSUE

Did Principal Life properly apply the terms of Petitioner's certificate in denying coverage for the PET scan?

IV ANALYSIS

Respondent's Argument

In its June 28, 2010, final adverse determination Principal Life explained its denial of coverage:

The reason for the panel review was in regards to charges incurred on August 8, 2009 . . . for a PET scan. This has been denied as the Milliman guidelines have not been met and these services are not Generally Accepted.

Under your policy Generally Accepted is defined as: "*Treatment or Service for the particular sickness or injury which is the subject of the claim that:*

- *Has been accepted as the standard of practice according to the prevailing opinion among experts as shown by (or in) articles published in authoritative, peer-reviewed medical and scientific literature; and*
- *Is in general use in the relevant medical community; and*
- *Is not under scientific testing or research."*

The Principal medical director . . . clarified that a PET scan in and of itself is not experimental, however, when a PET scan is performed in a situation when evidence does not show it as indicated, the PET scan is considered an experimental investigational measure and is not generally accepted under the policy. The claim file for the 8/8/09 PET scan had been reviewed in the

past by the [Principal Life] medical director who used Milliman criteria for PET scan. Milliman is a nationally recognized criteria. Also the National Comprehensive Cancer Network (NCCN) guideline that outlines treatment and testing strategies for rectal cancer was reviewed at that time. According to the NCCN guideline, the PET scan was not indicated for initial workup of rectal cancer.

Principal Life maintains that its decision to deny coverage for the PET scan was appropriate under prevailing medical standards and the terms of the certificate of coverage.

Petitioner's Argument

In his request for external review, Petitioner wrote:

Principal will not pay for the PET scan ordered by Dr. XXXXX (oncologist) after I was diagnosed with rectal cancer through a colonoscopy (Dr. XXXXX) on 7/28/09. . . . I was in the "planning session" with Dr. XXXXX and Dr. XXXXX (radiation). My treatment plan was for radiation and chemotherapy then surgery. I met with Dr. XXXXX (surgeon) for placement of a life port for chemotherapy on 8/12/2009. At the time of this meeting, the PET scan had been performed but [we] did not have the results. During the meeting on 8/12/2009 with Dr. XXXXX for placement of the life port, we discussed surgery as an option first. After discussion with Drs. XXXXX, XXXXX, XXXXX and XXXXX, the course of treatment was surgery first. The "plan" changed after the order of the PET scan.

Please refer to letter dated 5/25/2010 to the MI Division of Insurance which outlines my case, copy enclosed. Guidelines were not mentioned prior to PET scan. My wife spoke with a Principal representative.

The resolution I would like is for Principal Insurance to pay for the PET scan ordered by my oncologist, Dr. XXXXX.

In his May 25, 2010, letter the Petitioner refers to a letter from Dr. XXXXX in which the doctor stated that the PET scan was medically necessary because he had seen significant results using the PET scan. The Petitioner also stated that information taken from the Mayo Clinic web site said that PET scans are "mostly used in diagnosing cancer, especially . . . rectal cancer . . . and helps identify cancer that has spread, even if other tests (CT, MRI, ultrasound) cannot find it."

In the same letter, the Petitioner does note, "I have received a phone call from the department who schedules the PET scans for Mercy XXXXX saying they could not get confirmation from our insurance that I had coverage." However, the Petitioner also wrote that a Principal representative told his wife that "pre-approval for a PET scan was not necessary."

Commissioner's Review

As a preliminary matter, the Commissioner notes that Petitioner argues that his wife was told by Principal Life that pre-approval was not required for a PET scan. Under PRIRA, the Commissioner's role is limited to determining whether an insurer has properly administered health care benefits under applicable statutes and the terms of the health plan's policy or certificate of coverage. Resolution of the factual dispute described by the Petitioner (what was said, or not said, during a telephone conversation) cannot be the basis of this decision because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements.

Principal Life provides benefit coverage for medical services when they are medically necessary and proven to meet the criteria of its certificate of coverage.

According to the Definitions section of the certificate, the term "covered charges" refers to treatment or services which are:

- prescribed by a physician and required for the screening, diagnosis or treatment of a medical condition;
- consistent with the diagnosis or symptoms;
- not excessive in scope, duration, intensity or quantity;
- the most appropriate level of services or supplies that can safely be provided; and
- determined by The Principal to be Generally Accepted.

The certificate defines "generally accepted" as:

Treatment or Service for the particular sickness or injury which is the subject of the claim that:

- has been accepted as the standard of practice according to the prevailing opinion among experts as shown by (or in) articles published in authoritative, peer-reviewed medical and scientific literature; and
- is in general use in the relevant medical community; and
- is not under scientific testing or research.

The question of whether a PET scan was appropriate in the Petitioner's situation was presented to an independent medical review organization (IRO) as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO reviewer assigned to this case is a physician in active practice

certified by the American Board of Internal Medicine with a subspecialty in medical oncology. The reviewer is a member of the American Society of Hematology and the American Society of Clinical Oncology. The reviewer is published in peer reviewed medical literature and is a reviewer for the Journal of Clinical Oncology and Cancer. The reviewer's report includes the following analysis:

It is the determination of this reviewer that the PET scan rendered August 8, 2009 is considered experimental for [Petitioner's] condition since it has not been demonstrated to be superior to standard CT scans in this setting.

Standard of care for the pre-operative staging would include physical exam, colonoscopy, CEA, laboratory evaluation and CT scans of chest/abdomen and pelvis.

Clinical Rationale for the Decision

Positron emission tomography (PET) is a noninvasive imaging that assesses the level of metabolic activity and perfusion in various organ systems of the body. It has proven clinical utility in the evaluation and management of several cancers.

The role of PET in the detection of recurrence prior to potentially curative surgery for rectal carcinoma is uncertain. Until further data are available, PET scans have no role in routine surveillance. According to the National Comprehensive Cancer Network (NCCN) consensus panel recommendations, the standard pre-operative staging should include a CT scan and not a CT-PET scan. Thus, the current clinical scenario has not been shown to benefit from a PET scan to determine future treatment. In view of this, the use of PET scan in this situation would be deemed not medically necessary.

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 Principal Life's denial of coverage for the PET scan was consistent with the terms of the certificate of coverage.

V
ORDER

The Commissioner upholds Principal Life Insurance Company's June 28, 2010, final adverse determination. Principal Life Insurance Company is not required to provide benefit coverage for the PET scan that Petitioner received on August 8, 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.

R. Kevin Clinton
Commissioner