

**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. 113577-001

v

Priority Health  
Respondent

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

**ORDER**

**I  
BACKGROUND**

On July 14, 2010, XXXXX, authorized representative 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 July 21, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Commissioner notified Priority Health of the external review and requested the information used in making its adverse determination. On July 27, 2010, the Commissioner received Priority Health's response.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on August 4, 2010.

**II  
FACTUAL BACKGROUND**

The Petitioner is a member of Priority Health (Priority). On December 2, 2009, due to educational concerns including learning disorders and dyslexia, Petitioner's primary care physician Dr. XXXXX submitted a prior authorization request to Priority Health for coverage of a neuropsychological evaluation (office consultation, testing and treatment) from XXXXX, PhD, at the University XXXXX. Dr. XXXXX and the University XXXXX are not part of the Priority Health provider network. Priority Health denied the request having concluded that the evaluation did not meet Priority Health's criteria for medical necessity.

The Petitioner appealed the denial through Priority Health's internal grievance process and received its final adverse determination letter dated May 12, 2010.

**III  
ISSUE**

Did Priority Health properly deny coverage for Petitioner's neuropsychological evaluation?

**IV  
ANALYSIS**

Respondent's Argument

In its May 12, 2010, final adverse determination, Priority Health stated that neuropsychological evaluation is not a covered benefit in accordance with the certificate of coverage and schedule of copayments and deductibles. In support of its decision, Priority Health also cited its internal medical policy 91537-R2, "Neuropsychological and Psychological Testing."

The certificate of coverage includes this provision describing the coverage available for professional services:

**SECTION 6. Covered and Non-Covered Services**

\* \* \*

**A. Professional Services**

\* \* \*

## 2. Other Provider Care Services

\* \* \*

### Educational Services

#### *Covered Services*

- (a) Education to manage chronic disease states such as diabetes or asthma conducted by Participating Providers.
- (b) Maternity classes conducted by Participating Providers.

#### *Non-Covered Services*

- (a) Services for remedial education, including school-based services.
- (b) Services, treatment or diagnostic testing related to learning disabilities, cognitive disorders and development delays, and mental retardation.
- (c) Education testing or training, including intelligence testing. Testing and evaluation should be requested from and conducted by the child's school district.
- (d) Cognitive rehabilitation.
- (e) Classes covering such subjects as stress management, parenting and lifestyle changes.

Priority Health's internal medical policy includes these provisions:

- A. Neuropsychological testing is covered under the medical benefit when medically necessary for diagnostic assessment essential to the development of a treatment plan when there has been either:
  - 1. A significant mental status change not due to a metabolic disorder that has failed to respond to treatment; or
  - 2. A significant behavioral change, memory loss or organic brain injury and ONE of the following:
    - Traumatic brain injury
    - Stroke
    - Brain tumor
    - Cerebral anoxic or hypoxic episode
    - Central nervous system (CNS) infection
    - Neoplasms or vascular injury of the CNS
    - Neurodegenerative disorders
    - Demyelinating disease
    - Extrapyrarnidal disease
    - Exposure to intrathecal agents or cranial radiation known to be associated with cerebral dysfunction
    - Difficulty distinguishing between the neurocognitive effects of a neurogenic syndrome such as dementia vs. a major depressive disorder when adequate treatment for major depressive disorder has not resulted in improvement in neurocognitive function.

\* \* \*

C. Priority Health **does not cover** psychological/neuropsychological testing under either the medical or behavioral health benefit for ANY of the following indications because such testing may be provided by school districts or is not medically necessary (this may not be an all inclusive list):

- When performed primarily for educational purposes
- When performed in association with vocational counseling or training
- Personnel or employment testing
- Routine batteries of psychological tests given at inpatient admission or continued stay
- Testing performed solely or primarily for legal/forensic purposes
- Sexual and gender identity disorders

According to Priority Health, the records reviewed do not show that Petitioner has been diagnosed with any of the conditions outlined in section A, above. Priority Health argues that the requested Neuropsychological Evaluation and related services are not allowed per the certificate, and therefore its denial was appropriate.

#### Petitioner's Argument

The request for external review includes the following comments:

The reason for the denials indicated that medical necessity has not been met to satisfy coverage for a Neuropsychological Evaluation. However, our review of Medical Policy No. 91537-R2, indicates that the ICD-9 diagnostic codes referenced above are not listed as among those negating coverage for the testing. We take issue with the Policy's language that the "list may not be all inclusive." The carrier was otherwise very careful to list many codes as excluded from coverage. The omission of the codes for dyslexia and learning disorder (perhaps two of the more common reasons why young people who wish to improve their educational experience undergo testing) along with the ambiguous non-inclusivity language virtually ensures that the carrier has the upper hand; a discretionary guarantee to not provide coverage via this loophole.

Petitioner contends Priority Health should provide coverage for the requested services on the basis the services were previously covered by Blue Cross and Blue Shield of Michigan in 2007.

#### Commissioner's Review

Pursuant to Section 11(6) of PRIRA, MCL 550.1911(6), the medical issues in this appeal were presented to an independent medical review organization (IRO) for analysis. The IRO

reviewer is board certified in psychiatry and specializes in child and adolescent psychiatry and has been in practice for more than 12 years.

The IRO reviewer's report includes the following comments:

[T]his case involves a 15 year-old male for whom neuropsychological testing was being requested for the determination of the potential existence of a learning disorder. At issue in this appeal is whether this testing is medically necessary for diagnosis and treatment of the [Petitioner's] condition.

[Petitioner] underwent neuropsychological testing in February 2007 and was found to have overall IQ of 114. . . . [T]he neuropsychological testing in February 2007 found that the [Petitioner] had relative difficulty spelling and reading, but that these subsets fell in the average range. . . . [T]he member was not found to meet the DSM IV threshold for reading disorder in this testing. . . . [T]here was no documentation submitted to support that the [Petitioner] has a reading disorder or any other learning disorder, communication disorder, or phonological disorder. . . . [N]europsychological testing for the diagnosis of dyslexia or learning disorder not otherwise specified is not medically necessary for [the Petitioner]. . . . [T]he requested testing would be primarily psychoacademic and educational in nature. . . . [R]ecommended interventions from the prior testing in 2007 were academic/educational in nature.

The IRO concluded the requested services are not medically necessary for diagnosis and treatment of Petitioner's 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 that the testing is not medically necessary and that Priority Health's denial is consistent with the terms and conditions of the certificate and medical policy.

**V**  
**ORDER**

The Commissioner upholds Priority Health's May 12, 2010, final adverse determination. Priority Health is not required to provide coverage for the neuropsychological evaluation and related services requested.

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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R. Kevin Clinton  
Commissioner