

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. 115016-001

v

Physicians Health Plan of Mid-Michigan
Respondent

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

ORDER

**I
PROCEDURAL BACKGROUND**

On August 13, 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, MCL 550.1901 *et seq.*

The Commissioner notified Physicians Health Plan of Mid-Michigan (PHP) of the external review and requested information used in making its adverse determination. The information was received from PHP on August 18, 2010. The Commissioner reviewed the information received from both parties and accepted the request on August 20, 2010,

The case involves medical issues. Pursuant to MCL 550.1911(6), the Commissioner assigned the matter to an independent review organization, which submitted its analysis to the Commissioner on September 20, 2010.

II FACTUAL BACKGROUND

The Petitioner is a member of PHP, a health maintenance organization. Her benefits are defined in the PHP Select Plus HMO certificate of coverage (the certificate) and its outpatient prescription drug rider (the rider).

The Petitioner experienced a variety of menopausal symptoms and her physician prescribed hormone replacement therapy (HRT): naturally compounded estradiol, progesterone, and testosterone. When the Petitioner requested coverage for the naturally compounded HRT, PHP denied the request.

The Petitioner appealed the denial and after exhausting PHP's internal grievance process, received a final adverse determination dated June 30, 2010.

III ISSUE

Did PHP properly deny coverage for the naturally compounded HRT?

IV ANALYSIS

Petitioner's Argument

In her request for external review the Petitioner disclosed:

PHP denied my request for coverage of the naturally compounded HRT. I have tried the alternatives on the Prescription Drug List. While they have been somewhat effective there have been negative side effects. I am asking PHP to reinstate coverage for naturally compounded HRT even though it may mean a higher co-payment for me.

The Petitioner wants PHP to provide coverage for the naturally compounded HRT because she has responded well to this treatment.

Respondent's Argument

In its June 30, 2010 final adverse determination, PHP denied coverage for the naturally compounded HRT saying, in part:

Coverage for Estradiol compound and Progesterone compound was

originally denied because there are drugs available on the Prescription Drug List. Coverage for Testosterone compounds was originally denied because it is considered unproven and therefore specifically excluded. This decision is based on the following sections of your Certificate of Coverage. . . .

- Outpatient Prescription Drug Rider, Section 2: What's Not Covered – Exclusions, #5 & #13
* * *

PHP believes that its benefit determination was appropriate in the Petitioner's case.

Commissioner's Review

PHP says that the naturally compounded estradiol and progesterone are not covered because there are other suitable drug products on its formulary. PHP also said that it considers the testosterone compound to be an unproven medication for females. PHP relies on two exclusions in the rider (pp. 9-10) as the basis for its denial of coverage for the naturally compounded HRT:

Exclusions from coverage listed in the Certificate apply also to this Rider. In addition, the following exclusions apply:

* * *

5. Experimental, Investigational or Unproven Services and medications; medications used for experimental indications and/or dosage regimens determined by us to be experimental, investigational or unproven. . . .
* * *
13. Prescription Drug Products, including New Prescription Drug Products or new dosage forms that are determined to not be a Covered Health Service.

The issue in this appeal then is whether the requested estradiol and progesterone compounds are medically necessary for treatment of the Petitioner's condition and whether the requested testosterone compound is a proven treatment of her condition.

The issue was presented to an independent review organization (IRO) for a recommendation. The IRO reviewer is a physician who is board certified in obstetrics and gynecology and has been in practice for more than 15 years. The IRO reviewer's report includes the following:

The MAXIMUS physician consultant noted that the [Petitioner] reported

improvement in her menopausal symptoms with bioidentical hormones. The MAXIMUS physician consultant also noted that bioidentical hormones can be used in the treatment of menopausal symptoms. However, the MAXIMUS physician consultant explained that bioidentical hormones have not been shown to be superior to traditional hormone replacement therapy in the treatment of menopausal symptoms. The MAXIMUS physician consultant noted that [PHP's] approved prescription list includes traditional hormone replacement therapy. The MAXIMUS physician consultant explained that the effectiveness and long term safety of Testosterone for treatment of menopausal symptoms remains unproven. The MAXIMUS physician consultant also explained that Testosterone is investigational for use in women.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that the requested Estradiol and Progesterone compounds are not medically necessary for treatment of the [Petitioner's] condition and the requested Testosterone compound is unproven for treatment of her condition. [Citation omitted]

* * *

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 expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that naturally compounded estradiol and progesterone are not medically necessary and the testosterone compound is unproven for treatment of Petitioner's condition.

V ORDER

The Commissioner upholds PHP's June 30, 2010, final adverse determination. PHP is not required to cover the naturally compounded hormonal replacement therapy.

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 the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner