

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. 114549-001

v

Companion Life Insurance Company
Respondent

**Issued and entered
this 2nd day of May 2011
by R. Kevin Clinton
Commissioner**

ORDER

I

PROCEDURAL BACKGROUND

On August 2, 2010, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation (OFIR) under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* At all times pertinent to this appeal, the Petitioner received health care benefits under a group policy issued to his employer by the Companion Life Insurance Company (Companion Life).

The Petitioner was denied coverage by Companion Life for a number medical services provided by Petitioner's physician, Dr. XXXXX. The Commissioner notified Companion Life Insurance Company of the Petitioner's appeal and requested the information Companion Life used in denying Petitioner's claims. Companion Life submitted its material to the Commissioner on August 13, 2010, and September 8, 2010. Based on a review of that material, it does not appear that Companion Life afforded the Petitioner the opportunity for an internal appeal as required by section 2213 of the Michigan Insurance Code, MCL 500.2213. In addition, there is no evidence that

a final adverse determination was issued to Petitioner. When an insurer fails to timely issue a final adverse determination, an individual may file an external review request directly with the Commissioner pursuant to section 7 of the Patient's Right to Independent Review Act, MCL 550.1907.

The Petitioner's request for external review was accepted for review by the Commissioner. The medical issues presented in the Petitioner's appeal were assigned to an independent medical review organization which submitted its analysis and recommendations in reports dated September 7, 2010, and September 29, 2010.

II FACTUAL BACKGROUND

Petitioner's coverage with Companion Life was in effect from February 1, 2009, through May 1, 2010. Between July 31, 2009, and April 5, 2010, Petitioner received treatment from his physician for a number of complaints including fatigue, joint pain, and being overweight. Tests also revealed that Petitioner had low serum testosterone and vitamin D levels. After reviewing the claims submitted for these services, Companion Life denied claims for several 2009 office visits: August 24, August 31, September 15, September 29, October 21, October 29, November 13, and December 15. In addition, claims were denied for some laboratory services and injections of testosterone and other anabolic steroids.

III ISSUE

Did Companion Life correctly deny coverage for Petitioner's office visits and other services?

IV ANALYSIS

Petitioner's Argument

In his request for external review, Petitioner wrote:

I was denied coverage; but I tried Androgel and Testimcream, I broke out in an allergic reaction, so I can't use it. The [doctor] is treating me accordingly and I

am feeling better.

Several letters in support of the Petitioner's treatment were submitted to Companion Life by Petitioner's physician.

Respondent's Argument

In a letter to Petitioner's doctor dated April 19, 2010, Companion Life explained its handling of the various claims. The letter includes the following comments:

[Companion Life's] Independent Medical Reviewer determined that while testosterone was medically necessary, it could be replaced topically, thus eliminating the need for weekly injections and weekly return visits. . . .

* * *

Paragraph four of your letter indicates that as the Independent Medical Reviewer approved the use of Androgel, but the [Petitioner] had an allergic reaction to this cream and the cream had no effect on his disease, you feel that it would be appropriate to reimburse the [Petitioner] the benefit that would have been paid on the topical cream toward the cost of his injections. However, you have not submitted any documentation to substantiate that this [Petitioner] was allergic to the topical cream or that it had no effect on his condition.

Finally, paragraph six of your letter indicates that "injections of testosterone and other anabolic steroids are 'protective' and therefore fall within preventive treatment, even if not yet recognized by outside agencies." However, this [Petitioner's] Policy has the following provision applicable to "preventive" services:

SECTION 10 – EXCLUSIONS AND LIMITATIONS

No benefits shall be payable under the Policy for:

- 2. Any Confinement, treatment, service, supply or prescription which is: (a) not necessitated by a Bodily Injury or Sickness, (b) not authorized by a Physician; (c) not Medically Necessary; (d) not Necessary, Reasonable, and Customary; or (e) not incurred while this coverage is in force.*

* * *

Medically Necessary. *Means a medical service, supply or facility Confinement that is necessary for the treatment of a Sickness or Bodily Injury. Services and supplies which are Medically Necessary include only those which, as determined by Us:*

- 1. Have been established as safe and effective;*
- 2. Are furnished in accordance with generally accepted professional standards to treat a Bodily Injury or Sickness;*
- 3. Are rendered for the treatment or diagnosis of a Bodily Injury or Sickness, including premature birth, congenital defects and birth defects;*
- 4. Are appropriate for the symptoms, consistent with the diagnosis;*

5. *Are in accordance with generally accepted medical practice and professionally recognized standards;*
6. *Are not mainly for the comfort or convenience of the Covered Person or his or her Physician or other providers; and*
7. *Are not in excess (in scope, duration or intensity) of that level of care which is needed to provide safe, adequate and appropriate diagnosis or treatment.*
8. *When applied to Confinement in a Hospital or other facility, means that the Covered Person:*
 - a. *Must be Confined as an inpatient due to the nature of services rendered or due to his or her condition;*
 - b. *Cannot receive safe and adequate care through Outpatient treatment.*

Services and supplies are not automatically deemed Medically Necessary based solely on the fact that they were prescribed, ordered or recommended by a Physician or any other health care practitioner.

Companion Life also explained in an August 13, 2010, position paper to OFIR:

[I]n Dr. XXXXX's March 25, 2010 appeal he notes [Petitioner] had specific complaints to include "overweight." The policy contains a specific exclusion, #23, for treatment made in connection with weight reduction. Therefore, any treatment, regardless of type, aimed at weight loss would not be covered.

The medical records also consistently document that the [Petitioner] is being seen to evaluate low levels of testosterone and other potential deficiencies. "His complaints of decreased performance and fatigue are noted." Beginning August 24, 2009 the records include reference to sexual performance and "failure to ejaculate." The policy contains a specific exclusion, #31, excluding coverage for sexual dysfunctions or inadequacies.

In an April 5, 2010 appeal letter Dr. XXXXX makes a notation that the "injections of testosterone and the other anabolic steroids are 'protective' and therefore fall within preventative treatment. . . ." The wellness benefit rider provides wellness coverage (evaluation and tests, not steroid injections) performed by an insured's PCP up to a maximum benefit of \$250.00. The various steroid injections would therefore not be covered under the routine wellness benefit.

Commissioner's Review

The medical issues presented by this appeal were assigned to an independent review organization (IRO) for analysis. The IRO's reviewer is a physician who is board certified in internal medicine and has been in practice for more than 15 years.

The IRO reviewer's report of September 7, 2010, addressed the medical necessity of Petitioner's testosterone injections:

[T]he [Petitioner] required testosterone replacement therapy. . . . [T]estosterone

replacement therapy can be accomplished with intramuscular injection therapy, topical patches or gel formations. . . . [T]he information provided for review included a statement that the [Petitioner] had a reaction to Androgel. . . . [N]o information about the [Petitioner's] testosterone level on therapy was provided. . . . [T]estosterone levels rise after 1 week of topical testosterone therapy. . . . [T]here is no evidence from medical records that the [Petitioner] tried other forms of topical testosterone therapy.

[T]he [Petitioner] required treatment with testosterone replacement therapy only. . . . [T]he anabolic steroid nandrolone is used in the treatment of osteoporosis and is not standard recommended therapy for the [Petitioner's] condition. . . . [S]tanazolol and oxandrin injection therapy were not indicated for treatment of the [Petitioner's] hypogandism. . . . [T]here was no indication for vitamin B12 injection therapy in this case. . . . [T]he treatment options for testosterone replacement therapy include monthly injections, topical patches and topical gels. . . . [I]t is not possible to determine the most appropriate form of treatment for this [Petitioner] based on the information provided for review. . . . [I]f the [Petitioner] were to be treated with intramuscular injections of testosterone, these injections should be performed once a month and not weekly.

[T]he office visits that the [Petitioner] received 8/24/09, 8/31/09, 9/15/09, 9/29/09, 10/21/09, 10/29/09, 11/13/09, and 12/15/09 were not medically necessary treatment of his condition.

The September 29, 2010, IRO report addressed the laboratory tests ordered:

[E]valuation of the [Petitioner's] presenting symptoms did warrant some of the services he received. . . . [T]he [Petitioner] required measurement of routine blood tests, including a complete blood count with differential, comprehensive metabolic panel, lipid panel with C-reactive protein, thyroid stimulating hormone, serum testosterone and prostate specific antigen testing (along with blood draw handling fee, CPT code 36415 on 7/31/09). . . . [T]he other laboratory tests ordered in this case were not indicated based on the [Petitioner's] presenting complaints. . . . [S]creening for vitamin D deficiency is not recommended unless the patient is at very high risk of fracture, which was not the case for the [Petitioner]. . . . [T]here was no indication to evaluate a hepatitis panel as the [Petitioner] had no history of abdominal pain or jaundice, no documented exposure to hepatitis and normal liver function. . . . [T]here was also no clinical indication for measurement of iron studies, thyroid antibodies, free T4/T3, DHEA, HbA1c, estradiol, lipoprotein (a), homocysteine, IGF-1, insulin and cortisone levels, magnesium and reverse T3 testing.

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 Companion Life's denial of benefits was consistent with the terms of the certificate.

V
ORDER

The Commissioner upholds Companion Life's claims decisions.

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