

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
BEFORE THE COMMISSIONER OF FINANCIAL AND INSURANCE REGULATION

XXXXX

Petitioner

v

File No. 117566

Humana Insurance Company

Respondent

Issued and entered
this 3rd day of May 2011
by R. Kevin Clinton
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 15, 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 reviewed the information and accepted the request on October 22, 2010.

The Commissioner notified Humana Insurance Company of the external review and requested the information used in making its adverse determination. The Office of Financial and Insurance Regulation received the information from Humana on October 18 and October 19, 2010.

The case involves medical issues so the matter was assigned to an independent review organization, which submitted its analysis on November 5, 2010.

II
FACTUAL BACKGROUND

The Petitioner receives health care benefits through his employer. His health care benefits are defined in the Humana Insurance Company group policy number 710498.

Petitioner is a 39 year old male who was diagnosed with severe degenerative disc disease. In April 2008, he requested authorization from Humana for spinal disc replacement surgery to be performed at the XXXXX Clinic. Humana denied the request on April 29, 2008 stating that the proposed surgery was experimental/investigational. In July 2008, the Petitioner traveled to Germany and had the surgery performed at XXXXX Hospital in XXXXX, Germany. Humana reimbursed the Petitioner for the surgery but during a later audit determined the payment had been made in error and sought recovery of the \$11,850.06 it says was paid to the Petitioner.

Petitioner appealed Humana's denial of coverage for spinal disc replacement through Humana's internal grievance process and received its final adverse determination dated August 24, 2010.

III ISSUE

Did Humana properly determine Petitioner's spinal disc replacement surgery was experimental/investigational under the terms of the certificate?

IV ANALYSIS

Petitioner's Argument

In his request for external review Petitioner said:

Humana never paid for the service/procedure they deem "experimental." Review the enclosed documents (all charges are in euro) covering hospital billing. Compare the amount paid vs. the total cost/bill. The euro to U.S. dollar conversion was done on date of procedure or date of partial payment.

Respondent's Argument

In its final adverse determination, Humana explained why it denied coverage and sought recovery of its payments to the Petitioner:

Upon receipt of your appeal, all of the information was sent to an . . . independent physician reviewer specializing in Orthopedic Surgery. The independent reviewer found that the disc replacement surgery services provided to you in Germany beginning July 19, 2008, through July 30, 2008, are considered experimental/investigational under the plan. Humana's records indicate that the

claim for these services . . . was processed on August 21, 2009. When the claim was originally processed payment in the amount of \$11,850.06 was issued directly to you, under check number 8230988. Humana's records indicate that the check cleared the bank on September 15, 2009. As these services have been found to be experimental/investigational, the recovery request in the amount of \$11,850.06 is valid and will continue to be pursued.

Humana based its determination on provisions of Petitioner's policy which states:

Covered and non-covered expenses

If you incur non-covered expenses, whether from a network provider or non-network provider, you are responsible for making the full payment to the health care provider. The fact that a health care practitioner has performed or prescribed a medically appropriate procedure, treatment, or supply, or the fact that it may be the only available treatment for a bodily injury or sickness, does not mean that the procedure, treatment or supply is covered under the policy.

LIMITATIONS AND EXCLUSIONS

* * *

Unless specifically stated otherwise, no benefits will be provided for or on account of, the following items

- Any drug, biological product, device, medical treatment, or procedure which is experimental, or investigational or for research purposes.

Humana states that it based its conclusion that the surgery was experimental on an independent medical review. Humana maintains that it took proper action in denying authorization and coverage for Petitioner's surgery because experimental/investigational services are not covered.

Commissioner's Review

As a preliminary matter, the Commissioner notes that when Petitioner filed his request for review with this agency he asserted that "Humana never paid for the service/procedure they deem 'experimental'. . . ." Humana stated in their final adverse determination that they did pay Petitioner, in error, \$11,850.06 which Humana is now attempting to recover from the Petitioner. Under the Patient's Right to Independent Review Act the Commissioner's role is limited to determining whether Humana correctly applied the terms and conditions of the Petitioner's coverage. A dispute regarding Humana's recovery efforts is beyond the scope of the Commissioner's authority under the PRIRA and will not be addressed in this order.

Humana's policy excludes coverage for services that it determines are experimental or investigational. The question of whether Petitioner's surgery was experimental or investigational was presented to an independent review organization (different than the one employed by Humana) for review as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The assigned IRO reviewer is board certified in orthopedic surgery and has been in practice for more than 18 years.

The IRO reviewer's report included these comments:

[T]wo level disc replacement procedures are experimental/ investigational for the treatment of degenerative disc disease. . . . [L]ong-term outcomes and complications from two level disc replacement procedures have not been established in the peer reviewed medical literature. . . . [F]urther study is needed to establish the safety and efficacy of two level artificial disc replacement procedures. . . . [T]here are no long-term published outcome studies on two level lumbar disc replacement surgery.

The IRO reviewer concluded that the disc replacement surgery and related services the Petitioner received from July 19, 2008 to July 30, 2008 were investigational for treatment of Petitioner's condition.

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 Humana's denial of coverage was correct.

V ORDER

The Commissioner upholds Humana's August 24, 2010, final adverse determination. Humana is not required to provide coverage for Petitioner's July 19, 2008 through July 30, 2008 spinal

disc surgery and related services.

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