

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. 118470-001

v

Principal Life Insurance Company
Respondent

Issued and entered
this 10th day of May 2011
by R. Kevin Clinton
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 7, 2010, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for external review with the Office of Financial and Insurance Regulation (OFIR) under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner and his family live in Illinois and his medical care is provided in that state. The Petitioner receives health care benefits through his father's employer, a Michigan-based business. Petitioner's health care benefits are defined in a group health benefit plan underwritten by the Principal Life Insurance Company. On December 2, 2010, Principal Life provided to OFIR the information used in making its adverse determination. On December 13, 2010, after a preliminary review of the material submitted, the case was accepted for external review.

The case involves medical issues so the Commissioner assigned the matter to an independent review organization, which submitted its analysis to the Commissioner on December 27, 2010.

II FACTUAL BACKGROUND

In September 2010, Petitioner, then 17 months old, was diagnosed with autism. He was evaluated by XXXXX, in XXXXX. Petitioner's physician is XXXXX, a professor of clinical pediatrics at the XXXXX in XXXXX. Both XXXXX and Dr. XXXXX have recommended that Petitioner receive applied behavior analysis (ABA) therapy.

Principal Life denied coverage for the therapy. Petitioner's father appealed the denial through Principal Life's internal grievance process. Principal affirmed its denial of coverage and issued a final adverse determination dated December 2, 2010.

III ISSUE

Did Principal Life properly deny coverage for ABA therapy under the terms of the certificate?

IV ANALYSIS

Petitioner's Argument

Petitioner's father argues that the Principal Life has wrongly denied ABA therapy as education or training. He says that his son is at high risk of poor developmental outcomes if he does not receive ABA therapy. Research supports that if early, intensive intervention is provided there will be good outcomes. Research also support ABA therapy is not experimental. Petitioner's father points out that the Commissioner of Financial and Insurance Regulation has required an insurer in a previous decision to provide coverage for ABA therapy.

Petitioner's father believes ABA therapy is medically necessary for the treatment of his son's condition, therefore Principal Life should provide coverage for the requested therapy.

Respondent's Argument

In its December 2, 2010 final adverse determination, Principal Life denied coverage for ABA therapy stating:

We have denied the treatment as not covered per the policy limitation. The limitation states: "Covered Charges will not include and no benefits will be paid for Treatment or Services for education or training (except as provided under Management and Treatment of Diabetes), developmental delay, or learning disorders."

. . . We are not declining based on Medical Necessity or appropriate treatment. We are declining based on the policy limitation.

Principal Life maintains that its denial was appropriate under the terms of the certificate.

Commissioner's Review

The insurer's reason for denying coverage is stated in the final adverse determination quoted above. The Commissioner notes that the policy does not contain (and the insurer has not offered) definitions for the terms "education or training," "developmental delay," or "learning disorder." The final adverse determination also fails to explain why Principal Life concluded that ABA therapy constitutes education, training, or the treatment of a developmental delay or learning disorder.

The evaluation of the adverse determination, because it involves medical issues, was presented to an independent medical review organization (IRO) for analysis of the medical issues as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO reviewer assigned to this case is a physician in active practice certified by the American Board of Pediatrics with a subspecialty in developmental-behavioral pediatrics. The reviewer is a member of the American Academy of Pediatrics and the Society of Developmental and Behavioral Pediatrics and is published in peer reviewed medical literature. The IRO reviewer's report included the following analysis:

It is the determination of this reviewer that Applied Behavioral Analysis (ABA) is not considered a method of treatment or services for education/training. In addition, it is not used to treat or serve developmental delays or learning disorders. ABA is the standard of treatment for a specific medical condition: Autism.

ABA is the application of the principles of learning and motivation from Behavior Analysis, and the procedures and technology derived from those principles, to the solution of problems of social significance. Many decades of research have validated treatments based on ABA.

* * *

According to the certificate of coverage, ABA should not be excluded from coverage. The contract exclusion only refers to “education/training, developmental delay, or learning disorders.” Autism is a medical condition defined as a disorder with deficits in social interaction, communication and repetitive behaviors. Autism is not considered an educational condition, a learning disorder or only a developmental delay. Some types of autism could have educational problems or leaning disabilities that will be addressed with educational interventions, not ABA. Some children could also have developmental delays, such as language delays, that will require speech and language therapy, not ABA.

The language used in the health plan document is confusing. Here are some of the definitions that could be helpful to understand this case:

Education: Encompasses teaching and learning specific skills, and also something less tangible but more profound: the imparting of knowledge, good judgment and wisdom. Education has as one of its fundamental goals the imparting of culture from generation to generation. Education refers to academics and knowledge. ABA does not focus on education.

Training: Training is a learning process that involves the acquisition of knowledge, sharpening of skills, concepts and rules. Example: training to improve math skills or baseball skills. ABA does not focus on providing training to an individual on a particular skill.

Developmental Delay: This refers to when a child’s development lags behind established normal ranges for his or her age. It could refer to language skills, cognitive abilities, fine motor skills, gross motor skills or adaptive skills. Autism is a developmental disorder that among other signs includes developmental delays in one or more areas of development.

Developmental Disorder: a general term for any significant handicap with onset before eighteen (18) years of age affecting adaptive, self-help, cognitive and/or social skills and which continue for the life of the individual.

Based on the above discussion and the documentation submitted for review, ABA therapy for this enrollee’s condition is not considered “treatment or services for education/training, developmental delay, or learning disorders.” Therefore, ABA therapy should not be excluded from coverage based on contract language. ABA therapy for autism is the current standard of care.

Recommendation:

It is the recommendation of this reviewer that the denial of coverage issued by Principal Life Insurance Company for the proposed therapy, Applied Behavioral Analysis (ABA), be overturned.

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 ABA therapy was not consistent with the terms of the certificate.

V
ORDER

The Commissioner reverses Principal Life Insurance Company's December 2, 2010, final adverse determination. Principal Life Insurance Company shall provide coverage for the ABA therapy Petitioner received beginning October 18, 2010 through an unspecified end date subject to any limitations of the certificate. Principal shall, within 60 days, provide coverage and shall, within seven days of providing coverage, provide the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

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