

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

v

File No. 117066-001

Priority Health

Respondent

Issued and entered
this 20th day of June 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On September 20, 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 Priority Health of the external review and requested the information used in making its adverse determination. On September 21, 2010, Priority Health furnished information it used in making its final adverse determination. After a preliminary review of the material submitted, the Commissioner accepted the request for external review on September 27, 2010. Priority Health submitted additional information on October 1, 2010.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on October 8, 2010.

II. FACTUAL BACKGROUND

The Petitioner is a member of Priority Health, a health maintenance organization. Her health care benefits are defined in the certificate of coverage (the certificate).

The Petitioner lost about 115 pounds through diet and exercise over a period of years. Because of the weight loss, she was left with excess abdominal skin. She requested coverage for a panniculectomy, a surgical procedure that removes excess skin and body fat on patients who have had significant weight loss. Priority Health denied the request on the basis that the Petitioner did not meet its criteria for coverage.

The Petitioner appealed the denial through Priority Health's internal grievance process and received a final adverse determination letter dated July 23, 2010.

III. ISSUE

Did Priority Health properly deny coverage for a panniculectomy under the terms of the certificate?

IV. ANALYSIS

Petitioner's Argument

The Petitioner says that following her weight loss she was left with excessive abdominal skin that caused back pain, yeast infections, breast ptosis, pain in her shoulders, and intertrigo (an inflammatory condition of skin folds). Her physician recommended the panniculectomy.

The Petitioner argues that she saved Priority Health money by losing weight through diet and exercise instead of having expensive bariatric surgery. She contends that the panniculectomy is medically necessary and wants Priority Health to cover it.

Respondent's Argument

In its July 23, 2010, final adverse determination, Priority denied coverage for the panniculectomy, stating in part:

Rationale:

Clinical records reviewed do not evidence [the Petitioner] meets the required criteria as outlined in Priority Health's Medical Policy 91444-R4 for Panniculectomy/Abdominoplasty. The Certificate of Coverage excludes coverage for services that we determine are not clinically necessary according to our medical policies.

Facts:

The initial physician review conducted on September 30, 2009, of the information sent to Priority Health, determined that [the Petitioner] does not meet coverage criteria for panniculectomy.

Priority Health will cover a panniculectomy if certain criteria are met. Those criteria are contained in its "Panniculectomy/Abdominoplasty" medical policy:

II. POLICY/CRITERIA

- A. The excision of excess abdominal fat and skin is most often a cosmetic procedure and is not a covered benefit. Exceptions for medical necessity or functional impairment may be made if the criteria listed below are met.
 1. Panniculectomy/abdominoplasty may be a covered benefit upon prior authorization by Priority Health when one of the following is met:
 - a. Documentation by a dermatologist or a infectious disease specialist that the panniculus causes recurrent episodes of infection that do not respond to treatment or recurrent nonhealing ulcerations over 6 months despite appropriate medical therapy (e.g. oral or topical prescription medication) **or**
 - b. Documentation by the treating physician that the panniculus directly causes, due to its size and weight, significant clinical functional impairment which is directly attributable to the size and weight of the panniculus. "Clinical functional impairment" exists when the pannus causes significant cardiopulmonary or musculoskeletal dysfunction, or major psychological trauma, that interferes with activities of daily living, and there is reasonable evidence to support that this intervention will correct the condition to which it is being attributed to. Further definition can be located in the Certificate of Coverage.
 2. The following criteria must also be met:
 - a. Documentation with frontal and lateral photographs that the panniculus hangs to or below the level of the pubis.
 - b. Documentation by the treating physician that has determined that conservative management has failed, and that a panniculectomy will resolve the symptoms.

The certificate (p. 33) excludes from coverage services and supplies that are not medically or clinically necessary:

Not Medically/Clinically Necessary

Services and supplies that we determine are not Medically/Clinically Necessary according to our medical and behavioral health policies established by Priority Health with the input of physicians not employed by Priority Health or according to criteria developed by reputable external sources and adopted by Priority Health. If you disagree with us about Medical/Clinical Necessity, you (or your Participating Provider, if you wish) may appeal our determination . . . But unless and until we agree with you that the services and supplies will be Covered Services, they will be excluded from Coverage.

“Medically/clinically necessary” is defined on p. 52 of the certificate:

- (26) Medically/Clinically Necessary. The services or supplies needed to diagnose, care for or treat your physical or mental condition. The Medical Director, or anyone acting at the Medical Director's direction, in consultation with your PCP or other Participating Physician, or, for Mental Health or Substance Abuse services, the Behavioral Health Department, determines whether services or supplies are Medically/Clinically Necessary according to Priority Health's medical and behavioral health policies or adopted criteria that have been approved by community physicians and other providers. Medically/Clinically Necessary services and supplies must be widely accepted professionally by Priority Health's network physicians as effective, appropriate, and essential, based upon nationally accepted evidence-based standards.

Priority Health argues that Petitioner does not meet its criteria for a panniculectomy; therefore the procedure is not medically necessary.

Commissioner's Review

The question of whether the requested panniculectomy was medically necessary for the Petitioner's condition was presented to an independent medical review organization (IRO) for analysis, as required by section 11(6) of the Patient's Right to Independent Review Act.

The IRO reviewer is board certified in plastic surgery, holds an academic appointment at a large academic medical center, and has been in practice for more than 15 years. The IRO report said:

The MAXIMUS physician consultant [said] the medical records provided for review do not document significant non healing ulcerations or unresponsive infection. The MAXIMUS physician consultant noted that the [Petitioner's] plastic surgeon's note dated 2/25/09 reported that she has used topical creams for intertrigo and the primary care physician's note dated 8/7/09 reported yeast infections, but did not document treatment. The MAXIMUS physician consultant also noted that the medical records provided for review do not document an extended period of or failure of topical or systemic antibiotics or prescription anti-fungal medications. The MAXIMUS physician consultant further noted that the photographs provided for review do not document intertrigo or maceration.

The MAXIMUS physician consultant explained that there was no documentation demonstrating that the [Petitioner's] pannus has resulted in functional impairment. The MAXIMUS physician consultant noted that the member's letter dated 5/25/10 reported that she had participated in a 10 mile race, which demonstrated that she has significant mobility. The MAXIMUS physician consultant indicated that it is not clearly documented in the information provided for review that the member's back pain is due to her pannus.

Pursuant to the information set forth above, the MAXIMUS physician consultant determined that a panniculectomy is not medically necessary for treatment of the [Petitioner's] condition. [Citations 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 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 accepts the recommendation of the IRO and finds that a panniculectomy is not medically necessary for the Petitioner and therefore is not a benefit under the certificate.

V. ORDER

The Commissioner upholds Priority Health's July 23, 2010, final adverse determination. Priority Health is not required to cover the requested panniculectomy.

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 60 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