

STATE OF MICHIGAN
DEPARTMENT 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. 118096-001

v

Priority Health

Respondent

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

ORDER

I. BACKGROUND

On November 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.* On November 22, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request.

The Commissioner notified Priority Health of the external review and requested the information used in making its adverse determination. The Commissioner received Priority Health's response on November 17 and November 30, 2010.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's health care benefits. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner had a myocardial infarction in October 2009. She was referred to the XXXXX for evaluation in June 2010 and initiated treatment there with Dr. XXXXX, a cardiologist, and Dr. XXXXX, a geneticist.

On July 1, 2010, her group health care coverage changed to Priority Health, a health maintenance organization (HMO). The Petitioner wants to continue to see the doctors at the XXXXX even though they are not in Priority Health's network of providers.

On July 22, 2010, the Petitioner's physician submitted a request to Priority Health to allow her to continue treatment at the XXXXX. Priority Health denied the request on the basis that treatment is available within its network.

The Petitioner appealed the denial. At the conclusion of its internal grievance process, Priority Health affirmed its denial in a final adverse determination dated September 16, 2010.

III. ISSUE

Did Priority Health properly deny the Petitioner's request to treat with an out-of-network provider?

IV. ANALYSIS

Petitioner's Argument

On October 6, 2009, the Petitioner suffered a heart attack at age 38. Because she did not have any risk factors that would have led to a heart attack, her primary care physician referred her to Drs. XXXXX and XXXXX at the XXXXX.

The Petitioner, in her request for external review, explained why she wants to continue care at the XXXXX:

On 10/6/09 I had a heart attack at age 38 w/stent placement. I had several, severe complications. I also had no risk factors. My cardiologist feels treatment at the XXXXX is appropriate. They have 70 cases like mine. I am looking for the cause of my heart attack & to prevent any future ones. Genetic testing is being requested as a potential

spontaneous dissection was indicated. Auto-immune Disorders are also being looked at. I am asking to return to XXXXX for answers/treatment.

On September 2, 2010, XXXXX, MD, the Petitioner's local cardiologist, wrote in support of her request to go to the XXXXX:

[The Petitioner] had a myocardial infarction in October of 2009. Her coronary angiogram was very peculiar. She appeared to have an aneurysmal pocket in the proximal right coronary artery, which might have been a spontaneous coronary dissection versus ulcerated plaque. The [Petitioner] was stented and she ended up having severe vasospasm of the coronary vessel after the stenting and required significant amount of nitroglycerin and nicardipine to reverse. The [Petitioner] was referred to XXXXX for further evaluation and they agree on sending the [Petitioner] to a medical geneticist to assess for any genetic tendency for spontaneous coronary dissection. We would appreciate your support in referring the [Petitioner] to a medical geneticist. Unfortunately, there are very limited resources in Michigan regarding that and she might need to be seen at a place like the XXXXX or XXXXX or the XXXXX.

The Petitioner is requesting Priority Health to approve further care at the XXXXX.

Respondent's Argument

In its September 16, 2010, final adverse determination, Priority Health explained its denial:

. . . The standard of care is available in plan for [the Petitioner's] condition.

Services from Non-Participating providers are not a covered benefit when medically appropriate treatment is available from Participating providers. . . .

Priority Health says its denial was appropriate because there are providers in its network that are able to treat the Petitioner's condition.

Commissioner's Review

Priority Health is a health maintenance organization (HMO). A fundamental premise of HMOs is the centralization of health care delivery within a network of providers who sign contracts and agree to accept negotiated rates. The negotiated rates are a primary method of containing costs that ultimately benefits every member. If an HMO member uses an out-of-

network provider when services from in-network providers are available, payment for the out-of-network services may be greatly reduced or even excluded entirely by the HMO.

The Petitioner's health care benefits are defined in the Priority Health HMO certificate of coverage (the certificate). Under the certificate, services from a non-participating provider can be covered if the standard of care treatment is not available from a participating provider and Priority Health approves. The certificate (p. 4) states:

Section 2. Obtaining Covered Services

* * *

C. Referrals.

. . . Services with a Non-Participating Provider are covered when the standard of care treatment (medically appropriate treatment) for your condition is not available from a Participating Provider. All referrals to or services received from Non-Participating Providers (providers not listed in our provider directory) must be prior approved by us. . . . If you do not receive written approval from Priority Health prior to obtaining services from a Non-Participating Provider, you will be responsible for payment. . . .

NOTE: Sometimes your PCP or other Participating Physician may refer you for or suggest a service that we do not Cover. Just because your PCP or other Participating Physician refers you or suggests the service does not mean you will have Coverage for that service. . . . Remember – If you receive services that we do not Cover, you must pay for those services.

In this case, Priority Health says care for the Petitioner's condition is available within its network and identified these providers that it says can treat the Petitioner: Spectrum Health Cardiovascular Genetics Program, Heart Center for Excellence, Advanced Cardiac Health Care, Kalamazoo Cardiology, and Borgess Cardiology Group.

The Petitioner believes that continuity of care is important and it is understandable that she wants to continue to see the cardiologist and geneticist she saw at the XXXXX. However, the record does not establish that treatment was not available within Priority Health's network.

Under the terms of the Petitioner's coverage with Priority Health, she must receive care from providers in the network or pay for the services herself. The Commissioner therefore finds Priority Health's denial of coverage was consistent with the terms and conditions of the

certificate.

V. ORDER

The Commissioner upholds Priority Health's September 16, 2010, final adverse determination. Priority Health is not required to authorize the services the Petitioner is seeking from the XXXXX, a non-participating provider.

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