

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

XXXXXX

Petitioner

v

File No. 117701-001

Priority Health

Respondent

Issued and entered
this 19th day of July 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On October 27, 2010, XXXXX, authorized representative of his wife 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 (PRIRA), MCL 550.1901 *et seq.* The Petitioner is a member of Priority Health. Her health care benefits are defined in Priority Health's HMO Certificate of Coverage.

On November 3, 2010, after a preliminary review of the material submitted, the case was accepted for external review. An independent medical review was ordered pursuant to section 11(6) of the PRIRA, MCL 550.1911(6). The report was submitted to the Commissioner on February 16, 2011.

II. FACTUAL BACKGROUND

The Petitioner became pregnant in early 2010. In May 2010, her doctors determined that Petitioner was carrying quintuplets. Because of her medical history and past miscarriages, the pregnancy was determined to be high-risk. Her physicians concluded that Petitioner might require a procedure to reduce the number of fetuses from five to two to increase the likelihood of a successful pregnancy.

On June 2, 2010, Petitioner had an initial consultation with Dr. XXXXX, an XXXXX physician who specializes in high-risk pregnancies and fetal reduction procedures. Dr. XXXXX is not a participating provider in Priority Health's provider network.

On June 7, 2010, Petitioner's primary care physician submitted a request for a multi-fetal reduction procedure by Dr. XXXXX. On June 8, 2010, Priority Health denied the request.

On June 9 and June 16, 2010, Petitioner proceeded with the fetal reduction and later submitted claims to Priority Health. Priority Health denied coverage ruling that the services were excluded under the terms of its certificate of coverage and related medical policy titled *Termination of Pregnancy – Elective*.

The Petitioner appealed the denial through Priority Health's internal grievance process. Priority Health affirmed its decision in a final adverse determination letter dated September 16, 2010. Petitioner requests that Priority Health provide \$4,845.00 for the fetal reduction procedure.

III. ISSUE

Did Priority Health properly deny coverage for the Petitioner's fetal reduction procedure?

IV. ANALYSIS

Petitioner's Argument

Petitioner's husband explained in his request for external review:

Multifetal reduction procedures administered by Dr. XXXXX should be a covered benefit. While Priority Health's *Termination of Pregnancy – Elective* policy states that Selective Reduction of multi-fetal pregnancy is not a covered benefit, that same policy states that elective termination of pregnancy will be covered if two independent physicians concur that the babies cannot survive post-delivery AND if there are significant health risks for the mother. Dr. XXXXX and Dr. XXXXX both agreed that our quintuplet pregnancy was not viable post-delivery and agreed that carrying all five babies presented significant health risks for [Petitioner]. Both Dr. XXXXX and Dr. XXXXX agreed that these risks were substantially increased in our situation because of our previous pregnancy history of two losses. Finally, both Dr. XXXXX and Dr. XXXXX recommended that we move forward with the multi-fetal reduction and both considered it a medical necessity to preserve [Petitioner's] health.

Respondent's Argument

In its September 16, 2010 final adverse determination Priority Health denied coverage for the multifetal reduction stating that the services requested are not a covered benefit. Priority Health based its denial on the following provision of the certificate:

Section 6: Covered And Non-Covered Services

* * *

G. Family Planning and Maternity Care Services

Abortions

Non-Covered Services

All services and supplies relating to elective abortions.

Priority Health also cited its medical policy, *Termination of Pregnancy – Elective* which includes these provisions:

Elective termination of pregnancy is not a covered benefit unless the group/member has purchased the rider for that coverage.^[1]

A. The exclusion shall not apply to terminations of pregnancy performed when the mother's life is endangered by continuation of the pregnancy or when the pregnancy is a result of rape or incest (documented with a police report).

Conditions under which the elective abortion may be medically necessary and therefore a covered benefit include but are not limited to:

1. Severe psychiatric impairment (as evidenced by prior institutionalization or prior suicidal ideation)
2. Severe cardiac disease (prior history of cardiac decompensation)
3. Cancer (carcinoma of the cervix, breast, uterus)
4. Advanced hypertensive cardiovascular disease
5. Severe renal disease (on renal dialysis, severe renal impairment due to either chronic or acute kidney disease)
6. Intracranial aneurysm (history of prior intracranial bleeding)

B. Selective reductions for multi-fetal pregnancies are not a covered benefit.

C. Elective pregnancy termination may be covered when at least two independent physicians concur that a fetal condition diagnosed in utero is incompatible with life post-delivery.

¹ According to Priority Health, the Petitioner's coverage does not include that rider.

Finally, Priority Health points out that its certificate of coverage (page 34) provides:

You may only receive services from a Non-Participating Provider if your PCP or other Participating Physician has referred you and the services have been approved by us in advance when we consider approval necessary.

Priority Health states that the Petitioner did not have prior authorization for the fetal reduction and, in fact, had been denied authorization for the procedure.

Commissioner's Review

This appeal requires the Commissioner to determine the extent of medical benefits provided by Priority Health for maternity care. The Petitioner's letter of appeal to Priority Health states that her pregnancies were the result of fertility medication which had been prescribed by her physician. On two previous occasions pregnancy ended in miscarriages. In the present case, physicians recommended fetal reduction as the best method to avoid a third miscarriage.

The records submitted for this review do not indicate whether any of the Petitioner's fertility medications were covered by Priority Health. The Commissioner does note, however, that the Priority Health certificate of coverage provides no coverage for infertility treatment including artificial insemination and in-vitro fertilization (some coverage is provided for diagnostic, counseling, and planning services treating the underlying cause of infertility). The complete coverage description of these services is in section 6(G) of the certificate, pages 28-29, Family Planning and Maternity Care Services:

Covered Services

- (a) Diagnostic, counseling, and planning services for treatment of the underlying cause of infertility. Examples of Covered services are sperm count, endometrial biopsy, hysterosalpingography, and diagnostic laparoscopy.
- (b) Advice on contraception and family planning, including childbirth education.
- (c) Certain genetic counseling, testing and screening services when approved in advance by us.
- (d) Sterilization procedures . . .

Non-Covered Services

- (a) Birth control pills . . .
- (b) Services to reverse voluntary sterilization.
- (c) All services and supplies relating to treatments for infertility including, among other things, artificial insemination, in-vitro fertilization, embryo or ovum transfer procedures, any other assisted reproduction procedure, fees to a surrogate parent, prescription drugs designed to achieve pregnancy, harvest preservation and storage of eggs or sperm.

These provisions offer no support for a conclusion that coverage is available for fetal reduction procedures.

The Petitioner's appeal letter refers to Priority Health's medical policy regarding termination of pregnancy. This policy is a Priority Health document which describes in detail the circumstances under which coverage is provided for pregnancy termination. While acknowledging that the policy explicitly excludes fetal reduction from coverage, Petitioner argues that "the same policy states that elective termination of pregnancy will be covered if two independent physicians concur that the babies cannot survive post-delivery AND if there are significant health risks for the mother."

The medical policy provision actually states, "Elective pregnancy termination may be covered when at least two independent physicians concur that a fetal condition diagnosed in-utero is incompatible with life post-delivery." While two physicians did agree that fetal reduction was recommended to protect the mother's health, the physicians made no diagnosis of fetal conditions which were incompatible with life after delivery.

The specific exclusion of coverage for fetal reduction cannot be ignored in favor of another more general provision that addresses a different condition and medical procedure.

For that reason, the Commissioner finds that the Priority Health medical policy cited by the Petitioner does not establish that fetal reduction is a covered benefit.

The question of whether a multifetal reduction was medically necessary for Petitioner's condition was presented to an independent review organization (IRO). The IRO reviewer is a physician in active practice certified by the American Board of Obstetrics and Gynecology with a sub-specialty certification in reproductive endocrinology and infertility. The IRO reviewer analyzed the Petitioner's medical records and concluded:

[T]he current standard for treatment in this enrollee's condition was to offer multifetal reduction. The Health Plan criteria specifically exclude multifetal reduction as a covered service, and the enrollee did not meet those criteria. This reviewer has made a determination based on national guidelines and the current available peer-reviewed literature. . . .

It is the IRO reviewer's opinion that fetal reduction was medically indicated in Petitioner's situation. However, this conclusion does not complete the Commissioner's review. Priority Health is a health maintenance organization regulated under the Michigan Insurance Code. Requirements specific to HMOs are found in chapter 35 of the Insurance Code, MCL 500.3501 *et seq* which contains several provisions relevant to this review.

Section 3501(f)(1) describes an HMO as an entity that "[d]elivers health maintenance services that are medically indicated to enrollees *under the terms of its health maintenance contract.*" (Emphasis added)

Section 3501(e) defines a health maintenance contract as:

a contract between a health maintenance organization and a subscriber or group of subscribers, to provide, when medically indicated, designated health maintenance services, as described in and pursuant to the terms of the contract, including, at a minimum, basic health maintenance services.

These provisions make clear that, in order to be covered, a medical procedure must be both medically necessary and be among the services indicated in the certificate of coverage. Section 6(G) of the certificate indicates that services relating to treatment for infertility are “non-covered services.” This general exclusion is consistent with the guidelines found in the Priority Health medical policy.

While accepting the IRO reviewer’s conclusion that the services in question were medically indicated, the Commissioner concludes that those services are not among the benefits covered by the Petitioner’s contract.

V. ORDER

The Commissioner upholds Priority Health’s September 16, 2010 final adverse determination.

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