

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. 121623-001

Assurity Life Insurance Company
Respondent

Issued and entered
this 25th day of July 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On May 27, 2011, 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 June 3, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Petitioner receives health care benefits through a group plan (the certificate) that is underwritten by Assurity Life Insurance Company (Assurity). The Commissioner notified Assurity of the external review and requested the information used in making its adverse determination. Assurity provided its response on June 10, 2011. Medical issues presented by this case were analyzed by an independent medical review organization which provided its review and analysis to the Commissioner on July 14, 2011.

II. FACTUAL BACKGROUND

In February 2011, the Petitioner was diagnosed with prostate cancer. His physician recommended a laparoscopic prostatectomy using a robotic assisted procedure. Assurity denied the request, ruling that robotic surgery is not a covered benefit under the certificate of coverage. Assurity did agree to provide coverage for a manually-performed prostatectomy.

The Petitioner appealed the decision through Assurity's internal grievance process. Assurity affirmed its original decision and issued a final adverse determination dated April 27, 2011.

III. ISSUE

Did Assurity properly apply the terms of the certificate when it denied coverage for robotic assisted surgery?

IV. ANALYSIS

Petitioner's Argument

The Petitioner states he was informed that manual laparoscopic prostatectomy was a covered benefit and was given the name of some doctors who were capable of performing the procedure manually. He scheduled an office visit with one of the doctors but when he saw the physician, Petitioner was told that the physician not perform manual laparoscopic prostatectomies. He contacted another doctor on the list and was told the same thing. Both doctors indicated they had never heard of an insurance company refusing this treatment for prostate cancer if performed robotically.

The Petitioner believes that his robotic laparoscopic prostatectomy is medically necessary and his insurance company should be required to cover it.

Respondent's Argument

In its April 27, 2011, final adverse determination, Assurity denied coverage for the requested surgery because robotic assisted surgeries are specifically excluded under the policy. Assurity based its determination on the following policy provisions:

Eligible Expenses

. . . The following charges made for services and supplies that are Medically Necessary in the treatment of an Insured Person and prescribed by a Physician are Eligible Expenses subject to Insurance Plan provisions:

* * *

2) Surgical and medical care in and out of the Hospital, EXCLUDING Gamma-knife™ radiosurgery or Gamma-knife™ stereotactic radiosurgery or cyberknife surgery, laparoscopic robot-assisted surgery or open robotic surgery or robotic assisted surgery or any robot/robotic surgery;

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Exclusion, Exceptions and Limitations (applicable to all coverages)

There are situations where benefits may be limited or not provided by this Plan. With regard to any expense or combination of expenses, more than one exclusion may apply. Failing to list all applicable exclusions does not waive the right to apply or assert any such exclusion and the Plan reserves the right to do so. Unless otherwise specified under any benefit provision in the Insurance Plan, NO payment will be made under the Insurance Plan for Expenses Incurred by any Insured Person for the following situations:

* * *

- 19) for experimental procedures, treatment and surgery, laparoscopic robot-assisted surgery or open robotic surgery or robotic assisted surgery or any robot/robotic surgery, or Gamma-knife™ radiosurgery or Gamma-knife™ stereotactic surgery or cyber knife surgery including all related expenses, or for a procedure or treatment or Confinement or device considered to be investigational, experimental, or for a clinical trial including any costs related to clinical trials or research or any costs related to research. . . . (pages 29-31)

The Respondent indicates that they informed the Petitioner that he should contact “XXXXX,” a coordinator at the XXXXX, at 1-800-865-1125 to arrange a consultative appointment. Respondent states the Petitioner has not done that. Respondent also states they have confirmed with the XXXXX that the required surgery is performed there without the use of robotic assistance. (See Respondent’s letter of June 20, 2011.)

Respondent maintains that the Petitioner’s request for surgery was properly handled under the terms and conditions of the certificate.

Commissioner’s Review

As a preliminary matter, the Commissioner notes that both parties agree that it is medically necessary for the Petitioner to have a prostatectomy. Whether a robotic-assisted procedure is required is the main issue to be settled here.

An independent medical review was commissioned to evaluate the Petitioner’s request and the insurer’s denial of coverage. That review concluded that the robotic assisted procedure is not experimental or investigational. The review also found that “laparoscopic robotic assisted radical prostatectomy has similar cancer control compared to conventional radical prostatectomy.”

Petitioner’s certificate of coverage includes two provisions, quoted above, that exclude robotic assisted surgery from coverage. While there may be benefits for the Petitioner in having

his surgery done in a robotic assisted procedure, Assurity's policy does not provide that benefit and it is not required to do so under any Michigan statute. The Commissioner finds Assurity's denial is in compliance with the terms of the certificate.

V. ORDER

The Commissioner upholds Assurity Life Insurance Company's April 27, 2011, final adverse determination. Assurity is not required to provide coverage for the Petitioner's robotic assisted surgery.

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