

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING & 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. 119709-001**

**US Health and Life Insurance Company**

**Respondent**

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**Issued and entered  
this 12th day of August 2011  
by R. Kevin Clinton  
Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On February 23, 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.* The Commissioner accepted the request for external review on March 2, 2011.

The issue here can be decided by applying the terms of the contract defining the Petitioner's health care benefits. The Petitioner is covered under her employer's group health plan underwritten by US Health and Life Insurance Company (USHL). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

On October 11, 2010, the Petitioner had bilateral eye lid surgery in Germany where she was employed and lived at the time. USHL denied coverage indicating that because the procedure was provided outside the United States it is not a covered benefit.

The Petitioner appealed USHL's denial through its internal grievance process. USHL maintained its determination and sent Petitioner its final adverse determination dated February 8, 2011.

### **III. ISSUE**

Did USHL correctly deny coverage for Petitioner's October 11, 2010, surgery under the terms of the certificate?

### **IV. ANALYSIS**

#### Respondent's Argument

USHL denied coverage stating that its certificate excludes benefits for treatment or services received outside of the United States, its protectorates, Canada or Mexico, except for emergency treatment.

The Petitioner's Michigan physician requested prior authorization for eye lid correction surgery on two occasions. Each time, USHL issued a predetermination that was valid for 60 days. The last request for predetermination was issued on February 4, 2009, which was predetermined for 60 days and subject to all the terms of the policy. The Petitioner did not have the approved procedures performed on February 5, 2009, when her Michigan physician stated they were scheduled to be performed. She waited approximately 20 months later and then had the same or similar procedures performed on October 11, 2010, in Germany.

USHL maintains that the surgery was not emergency treatment and therefore not a covered benefit under the terms of the certificate.

#### Petitioner's Argument

The Petitioner states that USHL had twice preapproved her eyelid correction surgery. Therefore there is no dispute that this surgery was medically necessary. However, due to her employment in Germany for the last four years, she was unable to have the surgery in the United States.

The Petitioner argues that her condition was affecting her vision, and her work and daily life. She stated she could no longer wait until she returned to the United States so she proceeded with treatment in Germany as it was her only option.

The Petitioner understands that her plan only provides coverage in a foreign country for emergency treatment, but she believed it was an emergency situation. She was not able to see properly, the treatment was a medically necessary procedure and not cosmetic. The Petitioner believes that USHL is required to pay for this care.

Commissioner's Review

The certificate on page 36 under "General Exclusions" excludes coverage for "treatment or services that were received outside of the United States, its protectorates, Canada or Mexico, except emergency treatment."

The term "emergency" is not defined in the certificate, however, the Third Edition of the *American Heritage College Dictionary* defines "emergency" as "a serious situation or occurrence that happens unexpectedly and demands immediate action."

The Petitioner argues that her surgery was treatment of an emergency condition. She indicated that her condition was affecting her vision and she needed to have the surgery. However, in Petitioner's case, her condition did not happen unexpectedly since she had twice been approved for the surgery in the two years prior to having the surgery in Germany. She was well aware of this condition. Based on this, the Petitioner's October 10, 2010, surgery cannot be considered emergency treatment and therefore is not a covered benefit under the certificate.

The Commissioner finds that USHL correctly denied the Petitioner's October 11, 2010, surgery under the terms of the certificate.

**V. ORDER**

The Commissioner upholds USHL's adverse determination of February 8, 2011. USHL is not required to pay for the Petitioner's October 11, 2010, eyelid 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.

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R. Kevin Clinton  
Commissioner