

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. 122340-001

Physicians Health Plan of Mid-Michigan
Respondent

Issued and entered
this 26th day of August 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 13, 2011, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for an 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 Petitioner is a member of Physicians Health Plan of Mid-Michigan (PHPMM), a health maintenance organization.

The Commissioner notified PHPMM of the request for external review and requested the information used in making its final adverse determination. The Commissioner received its response on July 18, 2011. On July 20, 2011, after a preliminary review of the material submitted, the Commissioner accepted the case for review.

Because the case presented a medical question, the matter was assigned to an independent medical review organization which submitted its analysis on August 9, 2011.

II. FACTUAL BACKGROUND

The Petitioner has been diagnosed with a developmental dental facial deformity (Maxillary Class II Constriction and Mandibular Retrognathia Class II Hypoplasia). His physician recommended several surgical procedures to correct the deformity. Petitioner's physician submitted an authorization request to PHPMM for the proposed surgery. PHPMM

denied the authorization ruling that the Petitioner did not meet its criteria for coverage. The Petitioner appealed the denial through PHPMM's internal grievance process. PHPMM affirmed its denial in its final adverse determination dated June 3, 2011.

III. ISSUE

Did PHPMM properly deny authorization for Petitioner's proposed surgery?

IV. ANALYSIS

Petitioner's Argument

In a letter to PHPMM dated March 31, 2011, Petitioner's physician wrote:

[Petitioner] has been evaluated for orthognathic surgical correction of a developmental dental facial deformity. . . . Historically, [Petitioner] presents with difficulty masticating a diet of normal consistency, which results in an inadequate deglutition for adequate digestion. In addition, the premature posterior occlusion due to the skeletal problem has resulted in excessive wear of the posterior teeth and potential periodontal compromise. The patient has difficulty achieving lip closure and the open bite tendency has resulted in the patient being obligate mouth breather with desiccation of the oral and perioral tissue and the attendant inflammatory response. The significance of this patient's skeletal dysgenesis is greater than II standard deviations from the normal skeletal and cephalometric normals. For the performance of surgical procedures in this patient's case, would be to improve mastication, thereby allowing for normal deglutition of food and difficulty with dietary intake.

* * *

The surgical procedures outlined and their related diagnosis . . . would require inpatient hospitalization and general anesthesia. These procedures are requisite for the correction of a developmental and functional dental facial deformity that has resulted in grossly impaired mastication and phonation. These medical problems and their surgical correction are not being performed for any cosmetic consideration.

Respondent's Argument

In its June 3, 2011, final adverse determination PHPMM denied coverage for the proposed surgery stating:

[PHPMM] reviewed your request for coverage of an intraoral sagittal split with mandibular rigid fixation, leforte osteotomy advancement with transplatal and bone graft. The original decision to deny your request was upheld because your benefits do not include coverage for orthognathic surgery when criteria are not met. To meet the criteria you must have a significant functional impairment of your airway or nutrition status, medical as opposed to dental physiological functional impairment for which non-surgical treatments alone have not adequately treated your condition. This decision is based on . . . your Certificate of Coverage and [PHPMM's Medical Policy for Orthognathic Surgery].

PHPMM argues that its determination was appropriate.

Commissioner's Review

PHPMM provides coverage for orthognathic surgery when:

- provided by an in-network provider,
- PHPMM is notified in advance,
- the criteria of its certificate and medical policy are met, and
- the surgery is approved by PHPMM's Medical Director.

PHPMM's medical policy for orthognathic surgery states in pertinent part:

Policy Statement:

PHPMM considers orthognathic surgery medical[ly] necessary for correction of skeletal deformities of the maxilla or mandible when clinical documentation indicates:

- a) Skeletal deformities are contributing to medically significant functional impairment of airway or nutrition
- b) A medical as opposed to dental physiological functional impairment would be improved by orthognathic surgery
- c) Non-surgical treatment, such as dental therapeutics or orthodontics alone, have not adequately treated the condition

* * *

Clinical Determination Guidelines:

The primary consideration is to establish the presence of a medical functional impairment due to skeletal malformation or anomaly of the maxilla and/or mandible.

Documentation requirements for skeletal deformities related to masticatory dysfunction:

- a) a-c from Policy Statement
- b) X-rays to confirm diagnosis/discrepancy
- c) BMI (body mass index)
- d) Medical evidence of malnutrition
- e) Models and photos

The question of whether Petitioner's proposed surgery meets PHPMM's criteria for coverage 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 a dentist who is board certified in oral and maxillofacial surgery and has been in active practice for more than 15 years. The reviewer is familiar with the medical management of patients with the Petitioner's condition. A portion of the IRO reviewer's conclusions is stated below (a complete copy of the report is provided to the parties with this Order):

[T]he [Petitioner] meets the Health Plan's criteria for coverage of orthognathic surgery because he has skeletal deformities that are contributing to medically significant functional impairment in nutrition due to impaired mastication, he has a medical physiological impairment that would be improved with orthognathic surgery and non-surgical treatment is inadequate to treat his condition.

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 expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The Commissioner finds that PHPMM's denial is not consistent with the terms of the certificate as Petitioner meets the criteria for coverage under the terms and conditions of the certificate.

V. ORDER

The Commissioner hereby reverses PHPMM's June 3, 2011, final adverse determination. PHPMM shall provide coverage for the requested surgery, subject to any applicable copayments and deductibles, within 60 days of the date of this Order and shall, within seven days of providing coverage, provide the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

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