

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of the Department of Insurance and Financial Services

In the matter of:

The Recovery Project, LLC
Petitioner

File No. 21-1112

v

Home-Owners Insurance Company
Respondent

Issued and entered
this 20th day of September 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On July 9, 2021, The Recovery Project, LLC (Petitioner) filed with the Director of the Department of Insurance and Financial Services (Department) a request for an appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a. The request for an appeal concerns the determination of Home-Owners Insurance Company (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Respondent issued the Petitioner a written notice of the Respondent's determination under R 500.64(1) on June 14, 2021. The Petitioner now seeks reimbursement in the full amount it billed for the dates of service at issue.

The Department accepted the request for an appeal on July 14, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on July 14, 2021 and provided the Respondent with a copy of the Petitioner's submitted documents. The Respondent filed a reply to the Petitioner's appeal on August 2, 2021. The Department provided the Petitioner and Respondent with a written notice of extension on August 26, 2021.

The Department assigned an independent review organization (IRO) to analyze issues requiring medical knowledge or expertise relevant to this appeal. The IRO submitted its report and recommendation to the Department on August 16, 2021.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for physical and occupational therapy treatments performed on April 7, 9, 19, 21, and 23, 2021. The Current Procedural Terminology (CPT) codes at issue include 97110, 97112, and 97530, which are described as therapeutic exercise, neuromuscular reeducation, and functional performance activities, respectively.

With its appeal request, the Petitioner submitted a statement in support of the medical necessity of skilled therapy treatments for the injured person. The Petitioner stated that skilled therapy is needed to treat the injured person's diagnosis of an "incomplete T3 spinal cord injury" and associated problems, including a stage 4 sacral wound and bilateral carpal tunnel syndrome. The Petitioner explained that the injured person's therapeutic treatment goals included the following: demonstrating compliance with a home exercise program, tolerating standing for 60 minutes to perform household chores, increasing respiratory function, improving transfers from a wheelchair, building strength, improving skin integrity, and managing spasticity.

A discharge summary from April 23, 2021, indicated an anticipated plan for the injured person to return to therapy to "maintain functional status and prevent further deterioration" with the assistance of skilled therapists.

The Petitioner's request for an appeal stated:

Skilled therapy is necessary to maintain, prevent, and slow further deterioration of [the injured person's] functional status and the services cannot be safely and effectively carried out by the beneficiary personally, or with the assistance of non-therapists, including unskilled caregivers.

The Petitioner asserted that the American Occupational Therapy Association and American Physical Therapy Association guidelines support the scope of therapeutic treatment provided to the injured person on the dates of service at issue.

In its reply, the Respondent reaffirmed its position that the treatments provided on the dates of service at issue were not reasonable or medically necessary. The Respondent stated that the medical record dated April 23, 2021 showed that the injured person had reached a plateau in recovery, adding that the injured person's functional status and condition were unchanged since November 20, 2020. The Respondent further cited its physical medicine and rehabilitation advisor's opinion that the injured person had "exceeded the recommended course of sub-acute therapy under the Official Disability Guidelines" and noted that there had been "no change or progression in her rehabilitation or recovery."

The Respondent also stated in its reply that it has supported the injured person with a home exercise program, as referenced in the therapy care plan, by paying for home modifications, and

attendant care. Further, the Respondent noted that the Petitioner had ample time to “train either a family member or a home health aide in facilitating and supervising an appropriate home exercise program.”

III. ANALYSIS

Director's Review

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code. This appeal involves a dispute regarding inappropriate treatment and overutilization.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, medical necessity was supported on the dates of service at issue, and the treatments were not overutilized in frequency or duration based on medically accepted standards.

The IRO reviewer is board-certified in physical medicine and rehabilitation and has an active practice providing direct patient care. The IRO reviewer referenced R 500.61(i), in its report, which defines “medically accepted standards” as the most appropriate practice guidelines for the treatment provided. These may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, board, and associations. The IRO reviewer relied on the Journal of Neurological Physical Therapy of The American Physical Therapy Association, Centers for Medicare & Medicaid Services (CMS) information, evidence-based scientific exercise guidelines for adults with spinal cord injury, and current literature in spinal cord injury rehabilitation.

The IRO reviewer stated that, based on the submitted documentation, the injured person has a history of paraplegia, high-density lipoprotein, neurogenic bladder, severe bilateral carpal tunnel syndrome, hemiplegia, and hemiparesis, and received therapy for muscle weakness, reduced mobility, and paraplegia on the dates of service at issue. The IRO reviewer noted that the injured person has experienced continued deficits with mobility, transfers, balance, trunk control, and activity tolerance. The IRO reviewer stated that on April 7, 2021, the injured person tolerated therapy and neuromuscular reeducation, requiring a Hoyer lift transfer; “however, there was no meaningful progress in therapy through April 23, 2021.”

Notwithstanding the injured person's lack of significant progress in therapy, the IRO reviewer explained that current medical literature indicates that physical therapy “has been shown to improve recovery from incomplete SCI as well as positive effects on sitting and standing balance function” and that “ambulation training in addition to conventional over ground walking is recommended.” The IRO

reviewer noted that the literature recommends 20 minutes of moderate to vigorous intensity aerobic exercise two times per week" along with strength exercises for major muscle groups.

The IRO reviewer opined:

Though [the injured person] did not have any evidence of expected improvement during this time frame of April 7, 9, 19, 21 and 23, 2021, the services do meet the criteria "to maintain the patient's current condition or to prevent or slow further deterioration" as noted in the CMS guidelines. Additionally, per the Journal of Neurologic Physical Therapy ... aerobic walking training and gait training with augmented visual feedback are among the recommended rehabilitative interventions shown to improve functional outcomes including walking speed and timed distance for individuals with [the injured person's] condition. Therefore, the treatment does meet the criteria for medical necessity during this time and was medically necessary.

The IRO reviewer noted that current medical literature regarding exercise and rehabilitation guidelines for spinal cord injury, and guidelines from CMS and the Journal of Neurologic Physical Therapy contain the most "up to date criteria for establishing medically accepted standards." The IRO reviewer stated:

Rehabilitative therapy may be needed, and improvement in a patient's condition may occur, even when a chronic, progressive, degenerative, or terminal condition exists... The fact that full or partial recovery is not possible does not necessarily mean that skilled therapy is not needed to improve the patient's condition or to maximize his/her functional abilities.

Based on the above, the IRO reviewer recommended that the Director reverse the Respondent's determination that the physical therapy and occupational therapy treatments provided to the injured person on April 7, 9, 19, 21, and 23, 2021 were not medically necessary and were overutilized in frequency or duration in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director reverses the Respondent's determination dated June 14, 2021.

The Petitioner is entitled to payment in the full amount billed and to interest on any overdue payments as set forth in Section 3142 of the Code, MCL 500.3142. R 500.65(6). The Respondent shall, within 21 days of this order, submit proof that it has complied with this order. This order is subject to judicial review as provided in section 244(1) of the Code, MCL 500.244(1).

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director
For the Director:

X *Sarah Wohlford*

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford