STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Zynex Medical
Petitioner **File No. 21-1148**

v

Safeco Insurance Company of Illinois
Respondent

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

ORDER

I. PROCEDURAL BACKGROUND

On July 22, 2021, Zynex Medical (Petitioner) filed with 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 Safeco Insurance Company of Illinois (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment, products, services, or accommodations under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal is based on the denial of a bill pursuant to R 500.64(3), which allows a provider to appeal to the Department from the denial of a provider's bill. The Petitioner now seeks reimbursement in the full amount it billed for the date of service at issue.

The Department accepted the request for an appeal on August 6, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on August 6, 2021 and provided the Respondent with a copy of the Petitioner's submitted documents. Respondent filed a reply to the Petitioner's appeal on August 24, 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 September 8, 2021.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for a neuromuscular electrical stimulation (NMES) device and related supplies provided to the injured person on May 27, 2021. On June 15, 2021, the Respondent issued an "Explanation of Review" letter to the Petitioner, denying payment for the NMES device and related supplies.

With its appeal request, the Petitioner included a prescription for the NMES device indicating that the injured person's diagnoses neck pain, acute midline low back pain without sciatica, and a history of motor vehicle accident on March 20, 2021. In a clinical evaluation from May 7, 2021, the injured person's treatment plan indicated physical therapy treatments three times a week for six weeks. The injured person's physical therapy treatments were to include "patient education, home exercise program, therapeutic exercise, functional activities, neuromuscular re-education, manual therapy, hot/cold packs, [ultrasound], [interferential current therapy]."

In its reply, the Respondent reaffirmed its June 15, 2021 denial. The Respondent stated it relied on the American College of Environment Medicine (ACOEM) guidelines for its determination. The Respondent noted that the ACOEM guidelines do not recommend the use of NMES devices for the treatment of subacute low back pain or acute radicular pain syndrome. Additionally, the Respondent stated that there was "no clear indication that the use of oral NSAIDs, aerobic exercise and strengthening exercise had not sufficiently treated" the injured person's pain.

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 products.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, the neuromuscular electrical stimulation (NMES) device and related supplies provided to the injured person were not medically necessary.

The IRO reviewer is board certified in physical medicine and rehabilitation. In its report, the IRO reviewer referenced R 500.61(i), 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 American Association of Pain Medicine (AAPM) guidelines and medical journal articles for its recommendation.

The IRO reviewer explained that the NMES device provided to the injured person is a "electrical stimulator with multiple components and varying frequencies, with primary indications for intractable chronic pain management." The IRO reviewer noted that chronic low back pain typically refers to pain that "lasts longer three months or beyond the expected period of healing."

The IRO reviewer opined that the NMES device and related supplies were provided to the injured person prematurely. Based on the submitted documentation, the injured person's motor vehicle accident was March 20, 2021, and the NMES device and related supplies were prescribed on May 27, 2021. The IRO reviewer opined that the injured person was likely in the acute phase of injury, and a treatment plan was established for pain and spasm control with six weeks of outpatient physical therapy. Specifically, the IRO reviewer opined:

> The [NMES] device was provided prematurely to [the injured person] without first optimizing oral medications (such as neuropathic agents) and adjunct modalities during the course of outpatient [physical therapy] services. Additionally, [the injured person] should have had more time to be trialed with electrical stimulation during therapy sessions to ensure longer use tolerability and pain control.

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the neuromuscular electrical stimulation device and related supplies provided to the injured person on May 27, 2021 were not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director upholds the Respondent's determination dated June 15, 2021.

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:

Recoverable Signature

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford