

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

**In the matter of:**

**Laura Bertoncini**  
**Petitioner**

**File No. 21-1035**

**v**

**Michigan Insurance Company**  
**Respondent**

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**Issued and entered**  
**this 22<sup>nd</sup> day of June 2021**  
**by Sarah Wohlford**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On May 7, 2021, Laura Bertoncini (Petitioner), filed with the Director of the Department of Insurance and Financial Services (Department) a request for appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a. The request for appeal concerns bills denied by Michigan Insurance Company (Respondent) for acupuncture and massage therapy treatments.

The Department accepted the request for appeal on May 10, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on May 10, 2021, and the Respondent received a copy of the Petitioner's submitted documents. The Respondent filed a reply to the Petitioner's appeal on May 25, 2021.

The Department assigned an independent review organization (IRO) to review the issues in this appeal and provide a report and recommendation to the Department. The IRO submitted its report to the Department on June 8, 2021.

The Petitioner's appeal is made under R 500.65, which allows a provider to appeal to the Department from a determination made by an insurer. The Petitioner seeks reimbursement in the full amount billed for the treatment provided.

**II. FACTUAL BACKGROUND**

The Petitioner appeals the denial of payment for acupuncture and massage therapy treatments rendered on November 10, 2020; December 3, 11, 21, and 30, 2020; January 6, 13, and 27, 2021; and

February 4 and 10, 2021.<sup>1</sup> On March 2, 2021, the Respondent issued a determination letter denying payment for the dates of service at issue on the basis that the treatments were not medically necessary. The Respondent did not request a written explanation from the Petitioner regarding the medical necessity or indication for the treatment rendered to the injured person relevant to this appeal.

Petitioner's Argument:

In its appeal, the Petitioner submitted a letter stating that the injured person had been receiving treatments for pain management and improved function and quality of life. The Petitioner provided supporting medical documentation that indicated complaints of chronic neck and back pain. The Petitioner also argued that the care provided to the injured person was medically necessary for pain management and improved quality of life and daily function.

Respondent's Argument:

In its reply to the appeal, the Respondent stated that the treatment was not recommended as medically necessary after reviewing the medical documentation provided by Petitioner. Further, the Respondent explained that continued acupuncture and massage therapy was not supported on the dates of service at issue based on its review of the Petitioner's medical documentation.

### **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 is a matter of medical necessity and overutilization.

In support of its position, the Petitioner argued that the acupuncture, massage, and manual therapy treatments have helped reduce the injured person's neck and back pain and to improve daily functioning. The Petitioner noted that the injured person's overall pain had decreased in frequency and severity with subjective pain complaints reducing from 8-9 to 6-7 on a ten-point pain scale following treatment. Additionally, the medical records include an undated letter from the Petitioner explaining that the acupuncture, manual therapy, and massage treatments are beneficial to the injured person's quality of life and reduction in pain levels. Specifically, the Petitioner stated:

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<sup>1</sup> The Petitioner's appeal included reference to dates of service in February, March, and April 2020. MCL 500.3157a applies only to treatment rendered after July 1, 2020. Accordingly, the February, March, and April 2020 dates of service are not eligible for appeal and were not reviewed.

Without these treatments the patient is unable to sleep, [do] light house work, travel, garden, or shopping. She suffers from extremely high pain on a daily basis. When we give her treatments, she is able to function and her pain level decreases.

In support of its position, the Respondent issued a determination dated March 2, 2021, relying on the American College of Occupational and Environmental Medicine (ACOEM) guidelines for neck and back pain. The Respondent explained in its determination that the ACOEM guidelines recommend acupuncture "for select use in chronic cervicothoracic pain with or without radicular symptoms as an adjunct to facilitate more effective treatments." Respondent further explained that for low back pain, the ACOEM guidelines recommend acupuncture for "select use in the treatment of chronic moderate to severe low back pain as an adjunct to more efficacious treatments." These treatments may include a conditioning and strengthening program. However, the Respondent did not find evidence that the Petitioner rendered the treatments in combination with a conditioning and strengthening program.

In its determination, the Respondent further explained that the ACOEM guidelines state that appointments beyond a 6-visit trial should be linked to documentation of objective, measurable benefits from acupuncture such as decreased pain scores, reduced medication use, or functional improvement. The Respondent noted in its determination that the medical documentation showed pain levels were relatively unchanged at 6/10 following the treatments.

With regard to the massage therapy treatments provided on the dates of service at issue, the Respondent referenced ACOEM guidelines regarding the appropriate use of massage therapy for neck and back pain. The Respondent stated that "massage is recommended for select use in chronic cervicothoracic pain and subacute or chronic low back pain as an adjunct to more efficacious treatments consisting primarily of a graded aerobic and strengthening exercise program." The Respondent also noted that objective improvements should be shown approximately halfway through the regimen in order to continue this treatment course. The Respondent stated it did not find evidence in the medical record of any measurable objective benefits to the injured person from massage therapy or that the injured person had participated in any graded aerobic or strengthening exercise program.

In its reply to this appeal, the Respondent reaffirmed its position, further noting that the medical documentation did not indicate the use of acupuncture and massage for chronic neck and back pain in accordance with medically accepted standards and ACOEM guidelines. The Respondent stated:

There is no documentation that indications for acupuncture use in chronic neck and back pain were met. There is no documentation of use of this modality of treatment as an adjunct to more efficacious treatment. There is no documentation of what conservative care failed to provide benefit before presentation. There is no documentation of clear objective and functional goals to be achieved.

The Director assigned an IRO to review the case file. In its June 8, 2021 report, the IRO reviewer concluded that, based on the submitted documentation, medical necessity was not supported on the dates

of service at issue, and that the treatments were overutilized in frequency or duration compared with medically necessary standards.

The IRO reviewer has been a practicing acupuncturist for more than 40 years. The IRO reviewer referenced R 500.61(i), in their 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, boards, and associations. The IRO reviewer relied on the California Medical Treatment Utilization Schedule (MTUS) guidelines, which align with ACOEM Guidelines.

The IRO reviewer stated that the MTUS practice guidelines recommend an initial trial of 5 to 6 acupuncture appointments in combination with a conditioning program of aerobic and strengthening exercises, and that additional appointments should be tied to improvements in objective measures to justify an additional 6 sessions. The IRO reviewer explained that passive care such as acupuncture should be combined with active care, such as a conditioning exercise program, including stretching. However, the IRO reviewer did not find any clear indication in the medical record for the dates of service at issue to show that the injured person had participated in a conditioning and stretching exercise program based on her tolerance level and as recommended by MTUS/ACOEM guidelines. The IRO reviewer noted that indications for discontinuing care include non-compliance with aerobic and strengthening exercises and lack of measurable improvements.

Explaining the standard for measurable improvements, the IRO reviewer noted that the MTUS guidelines suggest that “additional treatments should only occur based on progressively greater, incremental objective gains.” However, the IRO reviewer found no objective, measurable changes of activity level in the medical records and no documentation of functional baselines either before or after the treatments. Specifically, the IRO reviewer stated:

...[A]fter acupuncture sessions were completed, the information provided for review failed to document any measurable, progressive, significant, objective function[al] obtained with previous acupuncture to support the reasonableness and necessity of the acupuncture rendered... [T]here were no cervical-lumbar spine examinations documented in the information provided for review, and the clinical findings including motor, sensory, or functional deficits such were addressed by the care rendered are unknown, and therefore the goals to be obtained with the acupuncture or massage are unclear... There was also no documentation provided for review demonstrating quantifiable medication intake reduction, work restrictions reduction or measurable activities of daily living improvement directly attributable to prior acupuncture.

The IRO reviewer found that “the number of acupuncture sessions completed exceeded the number of sessions recommended by the guidelines for continuation of care, and there were no extraordinary circumstances documented” to allow for medical necessity outside of the practice guidelines.


The IRO reviewer concluded that that the treatments provided to the injured person on the dates of service at issue were not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i), and were overutilized in frequency or duration compared with such standards. The IRO also stated that other concurrent treatment modalities are required before acupuncture and massage therapy can meet a medically accepted standard as defined by R 500.61(i). Therefore, the Department upholds the Respondent's determination dated March 2, 2021.

#### IV. ORDER

The Director upholds the Respondent's determination dated March 2, 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*

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Sarah Wohlford  
Special Deputy Director  
Signed by: Sarah Wohlford