STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

David A. Wiersema, D.O., PLLC
Petitioner **File No. 21-1076**

v

Citizens Insurance Company of the Midwest
Respondent

Issued and entered
this 3rd day of August 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 17, 2021, David A. Wiersema, D.O., PLLC (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 Citizens Insurance Company of the Midwest (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 March 31, 2021 date of service.

The Department accepted the request for an appeal on June 17, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on June 18, 2021 and provided the Respondent with a copy of the Petitioner's submitted documents. Respondent filed a reply to the Petitioner's appeal on July 6, 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 July 16, 2021.

II. Factual Background

This appeal concerns the denial of payment for chemodenervation injections with needle electromyography guidance and Myobloc rendered on March 31, 2021. These treatments were identified under Current Procedural Terminology (CPT) codes 64642 and 10454-0711-10 for injections with Myobloc with 95874 as an add-on for needle electromyography guidance. The Petitioner's supporting documentation included a medical record for the date of service at issue indicating a chief complaint of spasticity and traumatic brain injury as well as medical history of a closed head injury, mood disorder as a late effect of traumatic brain injury, seizure disorder, and attention deficit hyperactivity disorder.

With its appeal request, the Petitioner submitted examination notes for the date of service at issue which noted that the injured person's left foot tended to plantarflex and invert, her left Achilles tendon was shortened, and she had a positive Babinski sign on the left foot. The medical record for the date of service at issue noted impressions of muscle spasm and joint contracture and indicated that injections with electromyography guidance were provided. The Petitioner's medical record from the date of service at issue also noted the following intention for the treatments provided:

> Goal of injections is to increase positioning and improve function of the left lower extremity allowing [the injured person's] brace to fit more comfortably. Hopefully we can decrease the tone particularly in the posterior tibialis muscle group.

In support of its appeal, the Petitioner also submitted medical documentation of an office visit dated May 4, 2021, indicating that the injured person reported reduced foot and leg pain and better fit of her ankle foot orthosis (AFO) brace following the rendered treatment.

The Respondent issued an Explanation of Review to the Petitioner on May 6, 2021, denying payment of the treatments provided were not medically necessary. The Respondent did not request an explanation from the Petitioner regarding the necessity or indication for the treatments rendered.

In its reply, the Respondent reaffirmed its denial based on medical necessity as follows:

> After the Appeal documentation was reviewed, the [utilization review] physician indicated that there was no new documentation that alters the fact that procedure performed is considered experimental as the medication utilized is not FDA approved for this purpose.

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.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, the treatments provided on the date of service at issue were medically necessary and, further, that the treatments were not experimental in nature.

The IRO reviewer is in active practice, is board-certified in physical medicine and rehabilitation, and is a diplomate of the American Academy of Pain Management. 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 United States Food and Drug Administration (FDA) guidelines and peer-reviewed journal articles in making its recommendation.

The IRO reviewer opined that the chemodenervation injections with needle electromyography guidance and Myobloc provided on the date of service at issue were medically necessary. The IRO reviewer stated:

> Myobloc is indicated for treatment of spasticity associated with a central nervous system condition, including a traumatic brain injury. The medical records reflect use of this medication for this purpose after the failure of [a] first line option. The request is medically necessary.

The IRO reviewer further noted that the treatments provided were not experimental, stating that "this treatment has long been accepted, with extensive peer reviewed literature supporting [its] indication." The IRO reviewer noted current FDA labeling for the medication provided indicates that "Botox is indicated for the treatment of spasticity in patients two years of age or older." The IRO reviewer explained:

> The medical records in this case very clearly indicate that this patient has a history of traumatic brain injury with resulting spasticity and increased tone particularly in the tibialis posterior. The medical records discuss prior treatment of physical therapy and bracing and discussed prior benefits of Botox to decrease tone in order to allow for such treatment. This treatment is entirely consistent with FDA labeling recommendations for this treatment.

Based on the above, the IRO reviewer recommended that the Director reverse the Respondent's determination that the treatments provided to the injured person on March 31, 2021 were not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director reverses the Respondent's determination dated May 6, 2021.

The Petitioner is entitled to payment in the amount of $5,535.00 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 7 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:

8/3/2021

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford