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. 21-1086**

v

Esurance Property and Casualty Company
Respondent

Issued and entered
this 18th day of August 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 23, 2021, Zynex Medical (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 Esurance Property and Casualty Company (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate products or services, 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 May 3, 2021. 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 June 30, 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 30, 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 July 21, 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 2, 2021.

II. Factual Background

This appeal concerns the denial of payment for products and services relating to an electrical stimulator (E-Stim) supplied to the injured person on April 21, 2021. The Petitioner billed the following procedure codes: E1399, A4630, A4557, and A4556, referring to durable medical equipment (DME), replacement batteries for transcutaneous electrical stimulator, lead wires, and electrodes, respectively. These products were each coded as new equipment and were provided to the injured person in their home. With its appeal request, the Petitioner submitted copies of the manufacturer's invoices for each of the durable medical equipment and supplies at issue, including product descriptions and cost information.

The Petitioner also submitted medical documentation which included a DME prescription dated February 3, 2021, from a treating physical rehabilitation provider for an "E-Stim" device and monthly supplies. The duration of the prescribed equipment was left blank on the form. The injured person's diagnoses were noted on the prescription as panniculitis affecting the neck and back and radiculopathy of cervicothoracic region.

The Petitioner also submitted a treatment note dated June 1, 2021, from the ordering physical rehabilitation provider which further identified cervicalgia, low back pain, and left hip pain in addition to the diagnoses stated on the DME prescription. The treatment note indicated that the injured person reported difficulty doing daily activities and functions and that she had pain complaints in the left upper and lower extremities, back, and neck with slight pain relief following therapy. The care plan included 4 to 8 weeks of therapy with goals to decrease pain levels and increase strength and mobility.

The Respondent requested a written explanation from Petitioner in its determination, in which it sought the following specific information for further review:

> Additional information is needed to make a reasonable and necessary determination. Please include specific items need[ed] for medical necessity review: Treating Physician's progress notes February 2021.

The Respondent did not receive a response to its request for explanation from the Petitioner.

In its reply to the appeal, the Respondent reaffirmed its position and again noted that the treating provider's February 2021 progress notes were not submitted by the Petitioner for review. With its reply, the Respondent submitted its interpretation of American College of Occupational and Environmental Medicine (ACOEM) guidelines for the cervical and thoracic spine and stated that there was "insufficient evidence" for the use of electrical stimulation for the injured person's back pain. Specifically, the Respondent stated that "microcurrent electrical stimulation is not recommended for acute, subacute, or chronic cervicothoracic pain with or without radicular pain syndromes."

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, medical necessity was not supported on the date of service at issue.

The IRO reviewer is a licensed physical therapist in active clinical practice for 24 years. 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 National Center for Biotechnology Information (NCBI) including literature regarding the therapeutic and functional use of electrical stimulation.

Referencing the June 1, 2021 physical therapy treatment note, the IRO reviewer stated that this record was "devoid of objective clinical data and clinical narrative to support medical necessity" for the durable medical equipment and supplies provided on the date of service at issue.

The IRO reviewer stated:

> It is incumbent upon the clinical provider to furnish clinical objective data such as lack of range of motion, manual muscle testing, pain, and decreased function that would benefit from [the] durable medical equipment recommended...No objective clinical data was provided in the note to support medical necessity.

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the products and services provided to the injured person on April 21, 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 May 3, 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