STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Khaled Elganainy, DC
Petitioner **File No. 21-1090**

v

Citizens Insurance Company of the Midwest
Respondent

Issued and entered
this 7th day of September 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 28, 2021, Khaled Elganainy, DC (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 Citizens Insurance Company of the Midwest (Respondent) that the Petitioner rendered 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 April 16, 2021. 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 15, 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 26, 2021.

II. Factual Background

This appeal concerns the denial of payment for chiropractic treatments and diagnostic testing rendered on March 5, 2021 under Current Procedural Terminology (CPT) codes 99204, 72050, 72110, 72170, and 98942, referring to a moderate level office visit, x-rays of the cervical and lumbosacral spine and pelvis, and chiropractic manipulation, respectively.

With its appeal request, the Petitioner submitted a medical record dated February 18, 2021, from the injured person's referring physician which noted diagnoses of low back pain and cervicalgia and followed with a referral to the Petitioner for evaluation and treatment in "conjunction with an active rehabilitation program."

The Petitioner's supporting documentation also contained a medical record for the date of service at issue, which noted complaints of pain in the cervical, thoracic, and lumbar spine, left hip, left ankle, and left knee. The medical record for the date of service at issue noted that x-rays were ordered by the Petitioner "to rule out abnormalities." The same medical record further noted the following diagnoses following evaluation and treatment: subluxation of thoracic and lumbar vertebra, multiple rib fractures, nerve root injury of the lumbar spine, segmental and somatic dysfunction of the sacral region, and low back pain. The care plan for the injured person included chiropractic treatment 3 times per week for 4 weeks and recommendations to follow-up with a neurologist, pain management specialist, and primary care physician, and further testing.

In its April 16, 2021 determination letter, the Respondent denied all the treatments billed for the date of service at issue as not medically necessary. The Respondent noted in its determination that the "submitted documentation does not substantiate the treatments" as medically necessary. The Respondent further explained:

> Patients with low back or neck pain resulting from a motor vehicle should show statistically significant improvements in pain level, function and medication used. {ref: Schofferman J, Wasserman S.}. The current evidence suggests that exercise alone or in combination with education is effective for preventing low back pain. {ref; Daniel Steffens, PhD 1,2; Chris G. Maher, PhD1; Leani S. M. Pereira, PhD2; et al}.

In its reply, the Respondent stated that its reviewing physician noted an initial diagnosis of "preexisting bone spurring with left rotatory scoliosis at T11-S1 apex at L3" and reiterated that the documentation did not substantiate the treatments as consistent with accepted medical standards and appropriate for the injured person's condition. The Respondent also noted in its reply that "several questions arose" regarding the procedure codes that were billed, but the Respondent did not elaborate further on the nature of those questions.

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, only the chiropractic treatments provided to the injured person on March 5, 2021 were medically necessary in accordance with medically accepted standards, while the diagnostic testing provided was not medically necessary. In addition, the IRO reviewer found that procedure code 99204 for moderate-level office visit was not billed appropriately based on generally accepted billing and coding standards, but the remaining procedures billed for the date of service at issue were appropriately billed. Therefore, the IRO reviewer recommended that only procedure code 98942 should be reimbursed as "this code was determined to be both medically necessary and billed in accordance with generally accepted billing and coding standards."

The IRO reviewers consisted of a chiropractor, with over 30 years of experience and familiarity with the medical management of individuals with the injured person's condition, and a coding consultant (collectively, "IRO reviewer"). 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 Milliman Care Guidelines (MCG) Manipulation for Low Back Conditions, Official Disability Guidelines (ODG) Lumbar and Chiropractic Guidelines and evidence-based literature regarding low back pain.

The IRO reviewer opined that the chiropractic treatments provided to the injured person on the date of service at issue "were medically necessary and in accordance with medically accepted standards as defined by R 500.61(i). The IRO reviewer referenced MCG and ODG guidelines which recommend a trial of 6 visits over 2 weeks for therapeutic care for mild and severe back pain. Further, the IRO reviewer stated that the guidelines for severe back pain with evidence of objective functional improvement, a total of up to 18 visits over 6 to 8 weeks is recommended. The IRO reviewer explained:

> Severe back pain may include severe sprains/strains (Grade II-III) and/or non-progressive radiculopathy...Evidence-based literature supports chiropractic manipulation for chronic lower back complaints.

Regarding the diagnostic testing performed on the date of service at issue, the IRO reviewer found that "medical necessity was not established." The IRO reviewer noted that the injured person received diagnostic testing shortly after his injury and that there was no need for repeated diagnostic testing based on the submitted documentation.

The IRO reviewer opined:

> The chiropractic treatments provided to the injured person on 3/5/21 were medically necessary in accordance with medically accepted standards as defined by R 500.61(i), but the diagnostic testing provided to the injured person on 3/5/21 was not medically necessary in accordance with medically accepted standards as defined by R 500.61(i).

Regarding whether the procedure codes for the dates of service at issue were appropriate, the IRO reviewer referenced the National Correct Coding Initiatives (NCCI) and noted that procedure codes 72050, 72110, 72170 and 98942 can be billed together without the use of modifiers. However, the IRO reviewer noted that procedure code 99204 requires a modifier when billed in conjunction with 98942 and stated that there was no indication that a modifier was attached to this code at the time of billing for the services rendered. The IRO reviewer concluded that the Petitioner should be reimbursed only for chiropractic treatments rendered under procedure code 98942. The Director notes that nothing in the IRO reviewer's recommendation should be construed to prohibit the Petitioner from re-billing the codes appropriately or from the Respondent reprocessing bills with the appropriately billed codes.

Based on the above, the IRO reviewer recommended that the Director reverse, in part, the Respondent's determination that the chiropractic treatments rendered under procedure code 98942 provided to the injured person on March 5, 2021, were not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i). The IRO reviewer recommended that Respondent's determination that the diagnostic testing provided on March 5, 2021, was not medically necessary, as defined by R 500.61(i), should be upheld.

IV. ORDER

The Director reverses the Respondent's determination dated April 16, 2021, regarding chiropractic treatments provided on March 5, 2021 under procedure code 98942. The Director upholds the Respondent's determination of the same date for diagnostic services provided on March 5, 2021.

The Petitioner is entitled to payment in the full amount billed under procedure code 98942 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:

Recoverable Signature

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford