STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Rodnick Chiropractic Clinic
Petitioner — **File No. 21-1099**

v

Progressive Marathon Insurance Company
Respondent

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

ORDER

I. Procedural Background

On June 29, 2021, Rodnick Chiropractic Clinic (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 Progressive Marathon Insurance Company (Respondent) that the Petitioner overutilized or otherwise rendered 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 amount of $500.00, which is the difference in payments for the dates of service at issue.

The Department accepted the request for an appeal on July 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 July 6, 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 26, 2021. The Department provided the Petitioner and Respondent with a written notice of extension on August 19, 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 26, 2021.

II. Factual Background

This appeal concerns the denial of payment for diagnostic testing services rendered to the injured person on March 26, 2021, under procedure codes 96002 and 96004, which are described as, a dynamic surface electromyography (EMG), and review and interpretation by physician or other qualified health care professional of diagnostic test, with written report. On May 23, 2021, the Respondent issued the Petitioner an Explanation of Benefits denying payment on the basis that additional documentation was needed to support medical necessity and that the treatments exceeded the period of care for "either utilization or relatedness."

With its appeal request, the Petitioner stated that it disagrees with the Respondent's denial. The Petitioner submitted supporting documentation which identified the injured person's diagnoses as disorder of ligament of the vertebrae; cervicobrachial syndrome; hypoesthesia of skin; weakness; other muscle spasm; acquired deformity of the neck; segmental and somatic dysfunction of the cervical, thoracic, lumbar, sacral, and pelvic regions. In addition, the Petitioner submitted surface EMG exam reports and a clinical summary for the date of service at issue.

In a letter included in its appeal request, Petitioner stated:

> These tests are performed in a sincere effort to quantitatively and objectively examine the patient and document improvement. This helps me, the doctor manage the care for the [injured person] more effectively.

In its EOB, the Respondent explained that the diagnostic testing services were denied in accordance with American College of Occupational and Environmental Medicine (ACOEM) guidelines and a review of the medical records provided by the Petitioner. In its reply, the Respondent stated the Petitioner's use of surface EMG is not medically necessary for the "differential diagnosis of chronic pain." The Respondent stated:

> The medical records did not completely support this request as there are no documented extenuating circumstances to support the requested services. The charges for CPT code 94002 and 96004 were denied in accordance with MCL 3107, as the charges were 'not reasonably necessary', for the injured person's care, recovery, or rehabilitation pursuant to ACOEM Practice Guidelines.

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 overutilization and inappropriate services.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, the diagnostic testing services provided to the injured person under

procedure codes 96004 and 96002 on the date of service at issue were not medically necessary and were overutilized in frequency or duration based on medically accepted standards as defined by R 500.61(i).

The IRO reviewer who reviewed the medical necessity issues in this appeal is a practicing chiropractor. 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 College of Occupational and Environmental Medicine (ACOEM) practice guidelines in its recommendation. The IRO reviewer explained that the ACOEM guidelines do not support the use of surface EMG for the treatment of low back disorders. The IRO reviewer opined that documentation included with the Petitioner's appeal request did not establish an exception to the ACOEM guidelines for the injured person's treatment. Specifically, the IRO reviewer stated:

> [T]here is no compelling rationale presented or extenuating circumstances noted to the support the medical necessity of the requested surface EMG.

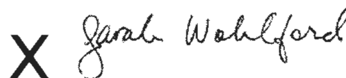
Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the diagnostic testing services provided to the injured person on March 26, 2021 were not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. Order

The Director upholds the Respondent's determination dated May 23, 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:

X 

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford