STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Electronic Waveform Lab, Inc.
Petitioner **File No. 21-1107**

v

Citizens Insurance Company of the Midwest
Respondent

Issued and entered
this 25th day of August 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On July 8, 2021, Electronic Waveform Lab, Inc. (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 products and services or accommodations, or that the cost of the products and services was inappropriate 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 June 1, 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 July 8, 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 13, 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 28, 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 11, 2021.

II. Factual Background

This appeal concerns the denial of payment for an H-Wave medical device with accompanying medical supplies provided on May 6, 2021.

With its appeal request, the Petitioner submitted supportive documentation which included a prescription dated May 3, 2021 from the injured person's prescribing chiropractor for an "H-Wave homecare device" to be used 30 minutes per session, 2 to 3 times per day every day. On the prescription, the chiropractor noted the goals of the device usage were to improve range of motion, provide pain relief, reduce the need for medication and increase activities of daily living. The prescription indicated that the injured person's prior treatment included medication, physical therapy, and chiropractic treatment. The Petitioner's documentation also included a "patient delivery evaluation" record dated May 10, 2021, which stated that the injured person reported reduced pain levels from 8-9 to 2-3 on a ten-point pain scale and overall improvement combined with physical therapy and heat application.

The Petitioner also submitted a manufacturer invoice for the H-Wave device in support of its charges. In its appeal request, the Petitioner stated that the device was prescribed as medically necessary.

In its Explanation of Review (EOR) dated June 1, 2021, the Respondent denied the charges for the medical products provided on the date of service at issue as not medically necessary and further stated that the charge exceeded an amount which would appear reasonable when compared to the charges of other providers in the same geographic area as the Petitioner.

In its reply, the Respondent stated:

> The submitted documentation is four months post motor vehicle accident with continual complaints and pain levels following multiple treatments. The documentation does not substantiate the procedure codes E1399, A4558 and A4556 as reasonable or necessary. The current evidence suggests that exercise alone or in combination with education is effective for preventing low back pain.

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 both medical necessity and inappropriate cost.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, although the Petitioner billed appropriately for the H-Wave medical device and supplies, based on the

submitted documentation these products were not medically necessary in accordance with medically accepted standards.

The IRO reviewer is a licensed chiropractor. 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 Official Disability Guidelines for sprains and disc disorders, FAIR Health Benchmark modules, and professional coding resources.

The IRO reviewer opined that procedure codes E1399, A4556, and A4558 billed by the Petitioner were appropriately billed in accordance with generally accepted billing and coding practices. Specifically, the IRO reviewer stated:

> Code E1399 was appropriately billed for H-Wave Homecare device (multi-functional electrical stimulation device); Code A4556 was appropriately billed for pair of electrodes; and code A4558 was appropriately billed for conductive gel or paste for use with H-wave device.

The IRO reviewer further noted that the charges billed by the Petitioner for code E1399 were consistent with reasonable reimbursement rates for the Petitioner's geographic region on the date of service at issue. The IRO reviewer explained:

> Reasonable and customary charges are determined by the time and place the services were provided, surveys of other neurological rehabilitation providers in or within the close proximity of same zip code, and Fair Health Charge Benchmark Database. Inquiries were also made to multiple neurological rehabilitation providers in and around zip code 48322 to determine reasonable and customary charges.

However, the IRO reviewer opined that the submitted documentation did not support the medical necessary of the H-wave medical device and supplies based on medically accepted standards. The IRO reviewer noted that, according to the submitted medical documentation, the injured person reported pain in the neck, back, right arm, and numbness and tingling in the right arm, and difficulty sleeping. However, the IRO reviewer stated that "studies suggest that exercise, therapy, and early mobilization lead to improved outcomes and recovery after whiplash-type injuries." The IRO reviewer explained that the ODG Chiropractic Guidelines are the same for sprains and disc disorders.

Specifically, the IRO reviewer stated:

> Current evidence-based medicine literature indicates that sprain/strains are usually self-limiting and resolve within six weeks of the injury, irrespective of treatment. The evidence-based treatment guidelines support a trial of 6 visits

> chiropractic treatment/therapy over 2-3 weeks with evidence of objective functional improvement, up to 18 visits of chiropractic treatment/therapy over a total of 6 to 8 weeks for the [injured person's] diagnosed conditions with transition to a self-directed home exercise program. This includes severe sprains/strains (Grade II-III) and/or non-progressive radiculopathy.

The IRO reviewer stated that evidence-based guidelines support active treatment modalities instead of passive treatments for substantially better clinical outcomes. The IRO reviewer opined that there is "no indication that the [H-Wave medical device and medical supplies] would result in further significant recovery and/or lasting improvement, therefore medical necessity cannot be substantiated."

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the medical device and medical supplies provided to the injured person on May 6, 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 June 1, 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