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. 21-1118**

v

American Economy Insurance Company
Respondent

Issued and entered
this 8th day of September
by Sarah Wohlford
Special Deputy Director

ORDER

I. Procedural Background

On July 12, 2021, Zynex Medical (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 American Economy Insurance Company (Respondent) that the Petitioner 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 date of service at issue.

The Department accepted the request for an appeal on July 23, 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 23, 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 August 10, 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 September 8, 2021.

II. Factual Background

This appeal concerns the denial of payment for a neuromuscular electrical stimulation (NMES) device and medical supplies provided to the injured person on April 30, 2021 under procedure codes E1399, A4556, A4630,

and A4557, which are described as durable medical equipment, electrodes, replacement batteries, and lead wires. On May 21, 2021, the Respondent issued an "Explanation of Review" letter to the Petitioner, denying payment on the basis that there was a lack of documentation to support the use of a NMES device for the treatment of "chronic persistent pain of the cervical or lumbar spines."

With its appeal request, the Petitioner provided documentation indicating that the injured person's diagnoses included cervicalgia, low back pain, pain in thoracic spine, other specified post procedural states, and a history of motor vehicle accident on December 10, 2020. The Petitioner's submitted documentation also included a provider order for the NMES device and physical therapy clinical treatment notes from January, February, and March 2021 to support the medical need of the NMES device.

In its reply, the Respondent stated that the Official Disability Guidelines do not recommend the use of NMES for treatment of chronic pain. Specifically, the Respondent stated that:

> NMES devices are used to prevent a retired disuse atrophy, relax muscle spasm, increase blood circulation, maintain or increase range of motion and reeducate muscles that have atrophied. In the clinical record submitted for review, there was documentation of chronic persistent pain to the cervical and lumbar spine… [H]owever, there was a lack of documentation of the indications for use of the requested unit in the treatment of chronic persistent pain of the cervical or lumbar spines.

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 NMES device and medical supplies were not medically necessary based on medically accepted standards as defined by R 500.61(i).

The IRO reviewer is board-certified in anesthesiology and pain management. 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 Practice Guidelines for Chronic Pain Management: An Updated Report by the American Society of Anesthesiologists and Noninvasive Treatments for Acute, Subacute, and Chronic Low Back Pain: A Clinical Practice Guideline From the American College of Physicians.

The IRO reviewer explained that the injured person had received physical therapy for "cervical radiculopathy, low back pain, thoracic pain, and right shoulder pain." The IRO reviewer noted that the documentation indicated the injured person received therapeutic exercise, therapeutic activity, neuromuscular rehabilitation, manual therapy, lifting mechanics, and postural training, and home exercise education as part of their physical therapy treatments. The IRO reviewer noted that the injured person's pain scale was 5 out of 10 with documented compliance with a home exercise program and 40 to 60% to goal for short-term goals, and 25 to 50% to goal for long-term goals.

The IRO reviewer opined that the NMES device provided to the injured person was not medically necessary based on the submitted documentation. The IRO reviewer stated that there was no evidence of "efficacy with electrical stimulation with physical therapy," as well as no evidence that the injured person had any "improvement of pain and function." Further, the IRO reviewer opined that there was no evidence that electrical stimulation provided the injured person with any "significant reduction of pain and improved function with trial of electrical stimulation."

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the NMES device and medical supplies provided to the injured person on April 30, 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 21, 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