

**STATE OF MICHIGAN**  
**DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**  
Before the Director of the Department of Insurance and Financial Services

In the matter of:

**Lupo Chiropractic**  
**Petitioner**

**File No. 21-1144**

**v**

**State Farm Mutual Automobile Insurance Company**  
**Respondent**

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**Issued and entered**  
**this 8<sup>th</sup> day of October 2021**  
**by Sarah Wohlford**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On July 22, 2021, Lupo Chiropractic (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 State Farm Mutual Automobile Insurance Company (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal is based on the Respondent's 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 Respondent issued the Petitioner bill denials on April 26, 2021. The Petitioner now seeks reimbursement in the full amount it billed for the dates of service at issue.

The Department accepted the request for an appeal on August 3, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on August 2, 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 12, 2021. A notice of extension was issued to both parties on September 9, 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 24, 2021.

## II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for chiropractic treatments rendered on September 2, 3, 8, 9, 16, and 17, 2020 and October 22 and 26, 2020. The Current Procedural Terminology (CPT) codes used on the dates of service at issue were 97110, 97012, 97140, 98942, 97535, and 99213, which are described as therapeutic exercise, mechanical traction, manual therapy, chiropractic manipulation, clinical instruction, and established office visit. The Petitioner included modifiers 59 and GP for CPT codes 97110 and 97140, modifier GP for CPT code 97012 and modifier 25 for CPT code 99213. The Petitioner did not include clinical documentation with its appeal request.

In its two “Explanation of Reviews” issued April 26, 2021, the Respondent requested a written explanation from the Petitioner requesting verification of the modifiers used and documentation to support the use of CPT code 97140 for manual/myofascial therapy.

With its appeal request, the Petitioner submitted a copy of its June 14, 2021 response to the Respondent’s *request for explanation* in which it explained that the Official Disability Guidelines (ODG) are “inappropriate to determine standard professional treatment protocols” relating to medical necessity of the treatments provided on the dates of service at issue. In its response, the Petitioner argued that ODG is designed for workers’ compensation injuries and that ODG guidelines are “not intended to be used for traumatic injuries sustained in motor vehicle collisions,” although they may be appropriate for “some circumstances.” The Petitioner further stated that it relied on the Arthur Croft Guidelines (Croft) for chiropractic treatment of the injured person.

In its reply, the Respondent stated that code 97140 for manual therapy was not compensable because the treatments were rendered to areas other than the injured person’s spine. The Respondent submitted medical records from the Petitioner’s treatment on the dates of service at issue which indicated complaints of pain in the neck, mid and low back, and persistent pain with prolonged sitting. The documentation described the rendered treatment as myofascial release therapy of “supporting muscles” adjacent to the spine. In its reply, the Respondent stated:

Manual therapy and other modalities to areas other than the spine, or that are for therapeutic purposes and not for the diagnosis or correction of a subluxation, fall outside the scope of chiropractic [care] as of January 1, 2009 and are not compensable per MCL 500.3107b(b) and *Measel v Auto Club Group Ins Co*, 314 Mich App 320, 335-37; 886 NW2d 193 (2016).

## 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 inappropriate treatment and overutilization.

The Director assigned an IRO to review the case file. In its report, the IRO concluded that the rendered treatments were within the scope of “practice of chiropractic” as defined under 1978 PA 368, MCL 333.16401 (Public Health Code). Notwithstanding, the IRO reviewer opined that, based on the submitted documentation, medical necessity was not supported on the dates of service at issue and the treatments were overutilized in frequency or duration based on medically accepted standards. ,

The IRO reviewer is board-certified in chiropractic medicine. 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 Council on Chiropractic Guidelines and Practice Parameters in addition to medical literature regarding chiropractic standards concerning the injured person’s conditions for its recommendation.

The IRO reviewer opined that the chiropractic treatments for the dates of service at issue are included under the scope of chiropractic practice in Section 16401 of the Public Health Code. The IRO reviewer explained that the areas of the body that were coded under CPT 97140 include “both shoulders, buttocks, piriformis, and tensor fascia latae.” The IRO reviewer explained:

- (d) “Musculoskeletal system” means the system of muscles, tendons, ligaments, bones, joints, and associated tissues that moves the body and maintains its forms.
- (e) “Practice of chiropractic” means that discipline within the healing arts that deals with the human nervous system and the musculoskeletal system and their interrelationship with other body systems.

All treatments, and treated areas, provided to [the injured person] were within the scope of practice for licensed chiropractors such as [the Petitioner]. All documented treatment procedures provided to the [injured person] are within the scope of chiropractic practice for licensed chiropractors such as [the Petitioner], according to section 16401 of the public health code...as of January 1, 2009.

However, the IRO reviewer stated that the treatments were not medically necessary, and explained that the Council on Chiropractic Guidelines and Practice Parameters recommends evidence of “progressive sustained improvement” to support medically necessary treatment. The IRO reviewer stated that the “submitted documents are inadequate and incomplete” and do not include diagnostic testing or adequate documentation regarding the injured person’s diagnosis, need for treatment, and specific outcomes.

The IRO reviewer explained that on September 2, 2020, the injured person reported multiple pain complaints ranging from 5 to 6 out of 10 on the pain scale, and that these pain levels remained consistent during the course of treatment, based on the submitted documentation. The IRO reviewer further noted

that, despite a reported exacerbation on September 16, 2020, pain levels remained at 4 to 5 out of 10, and the injured person had a gap in treatment until October 22, 2020. The IRO reviewer noted that when the injured person returned to treatment and reported a slight relapse, the pain levels remained the same. Specifically, the IRO stated:

[The injured person's] complaints remained the same, with "limited [range of motion] in neck, worse as the day goes on, mid back stiff/sore, thoracolumbar pain, pain aggravated by work"... Objectively, [the Petitioner] noted that the [injured person] was the same on most of the submitted chart notes as well... This would further suggest that with or without the chiropractic treatment, the [injured person] did not improve or regress, and treatment would not be considered medically necessary.

The IRO reviewer concluded that "no improvement was reported from the chiropractic treatment received from September 2, 2020 to October 26, 2020."

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the treatments provided to the injured person on September 2, 3, 8, 9, 16, and 17, 2020 and October 22 and 26, 2020 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 two determinations dated April 26, 2021.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

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:

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Sarah Wohlford  
Special Deputy Director  
Signed by: Sarah Wohlford