

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

In the matter of:

Lighthouse, Inc.  
Petitioner

File No. 21-1156

v

Pioneer State Mutual Insurance Company  
Respondent

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Issued and entered  
this 1<sup>st</sup> day of October 2021  
by Sarah Wohlford  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

On July 27, 2021, Lighthouse, Inc. (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 Pioneer State Mutual Insurance Company (Respondent) that the Petitioner that the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal arises under 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 dates of service at issue.

The Department accepted the request for an appeal on July 27, 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 27, 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 31, 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 15, 2021.

## II. FACTUAL BACKGROUND

This appeal concerns reduced reimbursement for psychotherapy treatments provided to the injured person on April 1, 8, 15, and 29, 2021, under Current Procedural Terminology (CPT) code 90832 with modifier AJ, as well as under CPT code 97112 for dates of service of April 13, 20, and 27, 2021. The procedure codes represent individual psychotherapy treatment provided by a licensed clinical social worker and neuromuscular reeducation.

With its appeal request, the Petitioner argues that the charged rates are reasonable to cover the expense it incurs to run its business. The Petitioner explained that “when the expense budget is finalized” it “determine[s] the percentage change in our charges that will be necessary to cover the expenses.” The Petitioner also included comparison charts of reimbursement amounts received for the same service from other auto insurers.

In its “Explanation of Review” dated May 27, 2021, the Respondent explained that the “charge exceeds that which is considered a reasonable charge for the services billed.” In its reply, the Respondent reaffirmed its position that its reimbursement amount was appropriate, stating:

[The Respondent] utilizes the 80<sup>th</sup> percentile of Fair Health Inc. geographical data to determine what is a reasonable amount of reimbursement for non-hospital bills.

The Respondent further noted that there were other factors that impacted its determination. The Respondent explained:

[T]he Correct Coding Initiative (CCI) dictates that unless services are provided by a physician, modifiers are to be used to reflect appropriated reimbursement by educational levels and licensure, and based on these factors, the level of reimbursement changes.

## 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 cost.

Under Chapter 31 of the Code, a provider may charge a reasonable amount for treatment, training, products, services, or accommodations; however, an insurer is only required to reimburse “reasonable

charges” for services. See MCL 500.3157(1)<sup>1</sup>, MCL 500.3107(1)(a). Under the Code, “the ‘customary charge’ limitation in § 3157 and the ‘reasonableness’ language in § 3107 constitute separate and distinct limitations on the amount health-care providers may charge and what insurers must pay with respect to victims of automobile accidents who are covered by no-fault insurance.” *Advocacy Org for Patients & Providers v Auto Club Ins Ass’n*, 257 Mich App 365 at 376, 670 NW2d 569 (2003), *aff’d* 472 Mich 91 , 693 NW2d 368 (2005).

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, the Respondent’s reimbursement amount for procedure code 90832 with a modifier of AJ and procedure code 97112 on the dates of service at issue was more than a usual and customary amount, and therefore appropriate under Chapter 31 of the Code.

The IRO reviewer is a licensed attorney and a certified coding consultant (IRO reviewer). The IRO reviewer based its recommendation on the FAIR Health allowable and charge amounts for CPT codes 90832 and 97112 using the November 2020 release data for allowable amounts in geozip 486 and zip code 48723.

Based on its review of procedure code 97112, the IRO reviewer summarized the following:

According to the Explanations of Medical Bill Payments provided for review, the [Petitioner] billed \$65.75 per unit for procedure code 97112 for each date of service at issue in this appeal. The Insurer allowed reimbursement of \$60 per unit. The [IRO reviewer] indicated that the 80th percentile for the charge amount is \$60 and for the allowed amount is \$29 for procedure code 97112. Therefore, the amounts allowed for these services were in excess of the 80th percentile standard.

Based on its review of procedure code 90832, the IRO reviewer stated:

According to the Explanations of Medical Bill Payments provided for review, the [Petitioner] billed \$131.50 for procedure code 90832 for each date of service at issue in this appeal. The Insurer allowed reimbursement of \$74.40. The [IRO reviewer] indicated that the 80th percentile for the charge amount is \$93 and for the allowed amount is \$57 for procedure code 90832. The [IRO reviewer] also indicated that based on the use of the AJ modifier for code 90832 reimbursement for this code should be 80 percent of the allowed amount. Therefore, the amounts allowed for these services were in excess with the 80th percentile standard subject to the adjustment for the AJ modifier.

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<sup>1</sup> Section 3157 was amended by PA 21 of 2019 to apply to dates of service July 2, 2021, and after; however, the relevant language in what is now Section 3157(1) was substantively unchanged and is therefore applicable to the dates of service in this appeal.

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the reimbursement amount for procedure code 90832 with an AJ modifier and 97112 was appropriate under Chapter 31 of the Code for the dates of service at issue.

#### IV. ORDER

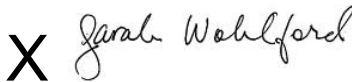
The Director upholds the Respondent's determination dated May 27, 2021.

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:

 Recoverable Signature



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Sarah Wohlford  
Special Deputy Director  
Signed by: Sarah Wohlford