STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Advanced Spine and Headache Center
Petitioner

v **File No. 21-1173**

Progressive Marathon Insurance Company
Respondent

Issued and entered
this 15th day of September 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On July 28, 2021, Advanced Spine and Headache Center (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 or ordered inappropriate treatment and services 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 May 21, 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 dates of service at issue.

The Department accepted the request for an appeal on July 29, 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 29, 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 18, 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 24, 2021.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for chiropractic services rendered on March 25 and 29; and April 5, 7, 8, 12, 14, and 15, 2021.

With its appeal request, the Petitioner submitted medical records and wrote:

> Please be advised that [the injured person] is being treated in this office for spinal injuries that she sustained in the motor vehicle accident on January 27, 2021. As a result of the aforementioned accident Ms. Kaplan sustained and re-aggravated numerous herniated disc injuries in her cervical and lumbar spine. After extensive evaluation of this patient, a comprehensive rehabilitation program was established to treat Ms. Kaplan for her injuries. The treatment dates ... were denied for payment by Progressive Insurance Company citing generalized guidelines. Please be advised that treatment that Ms. Kaplan is receiving is reasonable and necessary for patient's injuries to her cervical and lumbar spine. Injury-specific protocol was established by me, her treating physician, with over 23 years of experience in treating herniated disc injuries. In my professional experience, it takes at least six to twelve months to stabilize the injured spine and create structural integrity ultimately improving function and ADL and returning patient back to as close to a pre-accident status as possible.
>
> Wrongfully utilizing generalized ACOEM [American College of Occupational and Environmental Medicine] guidelines (that do not consider the extent of patient's injury, re-aggravation of pre-existing condition) and denying treatment is in violation of MCL No-Fault statutes.
>
> This is not a simple sprain/strain, but a serious spinal injury that resulted in numerous herniated disc causing pinched nerve and spinal stenosis.

In its reply to the Petitioner's appeal, Respondent wrote:

> Progressive's written notice of determination/explanation of benefits issued on 7/15/21 states the basis of the denial. First, it indicates that "this treatment was overutilized or inappropriate under Chapter 31 of the Act, MCL 500.2101 to 500.3179 and therefore is denied." Secondly, it states that "A Michigan UR nurse has reviewed this line and determined that this exceeds the period of care for either utilization or relatedness." Finally, it goes into greater detail and states that "In accordance with ACOEM Guidelines Cervical and Thoracic Spine and ACOEM Guidelines-Low back disorders, patients with more severe spine conditions may receive up to 12 visits over 6 to 8 weeks, typically one to 3 times a week....The medical records do not support this request, as the claimant has completed 20 chiropractic treatments prior to 4/5/21 which exceeds guideline recommendations. In addition, there is no documentation of objective functional improvement from this treatment. Based on the records reviewed and/or lack thereof, in conjunction with the guidelines cited, denial of treatment/service(s) is recommended."

Based upon the above, Progressive Marathon Insurance Company requests that this appeal be denied for the reasons stated above.

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 overutilization.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, the services in question were not medically necessary.

The IRO reviewer is a physician in active practice who is board certified in physical medicine and rehabilitation 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 wrote:

> The chiropractic and physical therapy treatments provided to the injured person on the above-referenced dates of service were not medically necessary in accordance with medically accepted standards as defined by R500.61(i). There was no initial evaluation supplied to support the need for the services that were provided.
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> * * *
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> The treatments ... were not overutilized in frequency and duration in accordance with medically accepted standards, as defined by R500.61(i). The treatment did not exceed guideline recommendations. However, it was not medically necessary.
>
> Per the Department of Insurance and Financial Services, Part 1. General, R500.61(i):"Medically accepted standards" means the most appropriate practice guidelines for the treatment, training, products, services and accommodations provided to an injured person. These practice guidelines 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, boards, and associations."
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> The American College of Occupational and Environmental Medicine (ACOEM) guidelines indicate that for cervical thoracic pain, physical therapy is appropriate for subacute and chronic pain and/or more severely and/or debilitated patients with 4-6 appointments to initiate and begin to reinforce an exercise program. Manipulation/mobilization is recommended for short-term relief of cervical pain or as a component of an active treatment program focusing on active exercise. Most

patients with more severe spine conditions may receive 12 visits over 6-8 weeks typically 1-3 times per week. The total treatment depends on the response to therapy. The guidelines indicate for the lumbar spine a course of 4-6 appointments for physical therapy is appropriate to initiate and reinforce home exercise program. The guidelines note that manipulation is appropriate for subacute low back pain and radicular symptoms without neurologic deficits. The indications include documentation that the patient has persisting intolerance or unacceptable pain after 7-10 days on a trial of nonsteroidal anti-inflammatory drugs, acetaminophen, or aerobic exercise. The frequency and duration is for patients with more severe low back pain 12 visits over 6-8 weeks, as long as functional improvement is being proven and documented after 3-6 visits.

The records provided for review did include an MRI. They did not include the initial evaluation prior to treatment to support the necessity for the treatment that was provided. As the initial visit was not provided, with objective findings on examination, the medical necessity for the care that was provided could not be established. Therefore, the chiropractic and physical therapy treatments performed on 3/25/2021, 3/29/2021, 4/5/2021, 4/7/2021, 4/8/2021, 4/12/2021, 4/14/2021, and 4/15/2021 were not medically necessary.

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the treatment provided to the injured person on March 25 and 29; and April 5, 7, 8, 12, 14, and 15, 2021 was not consistent 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