STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Joseph Lucido, DPT
Petitioner **File No. 21-1210**

v

Home-Owners Insurance
Respondent

Issued and entered
this 20th day of September 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On August 3, 2021, Joseph Lucido, DPT (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 Home-Owners Insurance (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment, products, services, or accommodations under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Respondent issued the Petitioner two written notices of the Respondent's determination under R 500.64(1) on June 29, 2021 and July 8, 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 4, 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 4, 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 25, 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 3, 2021.

II. Factual Background

This appeal concerns the denial of payment for physical therapy treatments rendered on May 5, 24, and 26, 2021, under Current Procedural Terminology (CPT) codes 97110 and 97530, which are described as therapeutic exercise and therapeutic activities to improve function. With its appeal request, the Petitioner submitted documentation that indicated the injured person sustained an incomplete cervical spinal cord injury in March 2004, along with a traumatic brain injury following a motor vehicle accident. The Petitioner also included progress reports, physical therapy treatment notes, and a treatment prescription.

In support of the necessity of treatment rendered, the Petitioner noted:

> The Utilization Review stated that [the injured person] did not demonstrate evidence of functional improvements to justify additional visits. However, the documentation that demonstrates functional improvements was not reviewed in this Utilization Review. There was a progress report on 4/26/21 that discusses the reasons why [injured person] had several setbacks with his function at that time. Additionally, the progress report completed discusses several areas of functional improvement including improved ability to transfer into and out of his wheelchair as well as improved ability to perform sit to stand transfers from the edge of a bed.

In addition, the Petitioner's request for appeal stated:

> The Utilization Review also discusses transitioning [the injured person] to a home exercise program. This is not a feasible option for this patient at this time. As seen in the treatment session documentation from 5/24/21 and 5/26/21, the physical therapy interventions are skilled interventions. The interventions completed in physical therapy are not appropriate to be completed by an unskilled member of [the injured person's] home care staff. Additionally, he does not have access to the equipment that is used in his treatments. It is well documented throughout his entire chart that he has significant balance deficits. Physical therapy interventions have been addressing his functional ambulation with a rolling walker. This requires very close guarding and is not appropriate to be completed by an unskilled member of his care staff.

In its two determinations, the Respondent stated that the Petitioner overutilized services and the treatments rendered are not medically necessary. As a basis for its denial, the Respondent stated that its utilization review is consistent with Official Disability Guidelines (ODG). In is reply, the Respondent further explained:

> [The Respondent] pays for a professional skilled agency care and has paid for specialized equipment that could effectuate a home physical therapy plan for [the injured person] as contemplated by the [determination] and medical guidelines. During the time of the [Petitioner's] treatment, [the Respondent] has paid for 24 hour professional skilled agency care provided by [a home care agency provider].

The Respondent also noted:

> On a daily basis, the professional home care providers assist [the injured person] with transfers and mobility using his various equipment that includes the Rifton Pacer gait training walker and a secondary gait training walker. There professional service providers are available around the close to assist [the injured person] with [a Home Exercise Plan].

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 or 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 physical therapy treatments provided to the injured person on May 5, 24, and 26, 2021, were not medically necessary and were overutilized in frequency or duration in accordance with medically accepted standards.

The IRO reviewer is a board certified orthopedic physical therapist. 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 American Physical Therapy Association (APTA) and Official Disability Guidelines (ODG) by MCG.

The IRO reviewer opined that the physical therapy services provided to the injured person on dates of service at issue were not medically necessary and overutilized in frequency or duration in accordance with medically accepted standards. The IRO reviewer noted that based on the APTA and ODG guidelines, "the injured person may participate in up to 34 visits of therapy services after a spinal cord injury and 48 visits after surgical intervention involving a spinal cord."

The IRO reviewer further opined:

> The submitted documentation indicated the injured person has highly exceeded the recommended number of visits. It is noted on his 04/26/2021 therapy visit that [the injured person] had already participated in 72 prior visits of physical therapy services. The documentation indicated he was making slow progress. There is no documentation that supports additional therapy outside of the recommended number of physical therapy sessions. Therefore, the requested physical therapy is

not medically necessary in accordance with medically accepted standards as defined by R 500.61(i). Physical therapy was overutilized in frequency and duration in accordance with medically accepted standards as defined by R 500.61(i).

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the physical therapy treatments provided to the injured person on May 5, 24, and 26, 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 determinations dated June 29, 2021 and July 8, 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