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. 21-1225**

v

Allstate Fire and Casualty Insurance Company
Respondent

Issued and entered
this 23rd day of September 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On August 5, 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 Allstate Fire and Casualty Insurance Company (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 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 August 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 August 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 30, 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 7, 2021.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for durable medical equipment and its related supplies provided on April 28, 2021 under Current Procedural Terminology (CPT) codes E1399, A4556, A4557, and A4630, which is described as durable medical equipment, electrodes, lead wires, and replacement batteries for a transcutaneous electrical stimulator. With its appeal request, the Petitioner submitted documentation demonstrating the following diagnoses: subluxation of C5-C6 cervical vertebrae, other cervical disc displacement at C5-C6 level, subluxation of T1-T2 thoracic vertebra, pain in the right shoulder, subluxation of L2-L3 lumbar vertebra, dislocation of unspecified parts of lumbar spine and pelvis, low back pain, myalgia, cervicalgia, radiculopathy, cervical region, and headache. The Petitioner also included a treatment note from the injured person's treating chiropractor to support the medical necessity of the durable medical equipment and its related supplies.

In its *Explanation of Medical Bill Payment* dated May 28, 2021, the Respondent denied payment based on medically necessary. As a basis for its denial, the Respondent stated that is utilization review was consistent with the Official Disability Guidelines (ODG) and the American College of Occupational and Environmental Medicine (ACOEM) guidelines. In its reply, the Respondent further explained:

> In accordance with ACOEM low back guidelines, prior management with [nonsteroidal anti-inflammatory drugs (NSAID)], aerobic exercise and strengthening exercise is necessary prior to recommendation of [transcutaneous electrical nerve stimulation (TENS)] and TENS is not recommended for cervicothoracic pain syndromes. The medical records do not support this request, as there is no documentation of NSAID use and there have been approximately 17 physical therapy visits 01/26/21-05/14/21.

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 products.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, medical necessity was not supported on the date of service at issue based on medically accepted standards.

The IRO reviewer is a physician board-certified in physical medicine and rehabilitation. 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 Official Disability Guidelines by MCG for low back conditions.

The IRO reviewer explained that a:

> NexWave (by Zynex) is a 3-in-1 device with interferential current (IFC), transcutaneous electrical nerve stimulation (TENS), and neuromuscular electrical stimulation (NMES).

The IRO reviewer opined that:

> [The] Official Disability Guidelines state that NMES is not recommended for treatment of chronic pain. The guidelines state a trial of TENS may be considered as a noninvasive [second]-line option, only when subjective improvement and reduction in pain medication use have been previously documented during a program of evidence-based functional restoration.

The IRO reviewer further noted that the:

> Official Disability Guidelines also recommends a trial of IFC when pain is ineffectively controlled due to diminished effectiveness of medications. The DME provided on 04/28/2021 included the stimulator, electrodes, lead wires, and batteries. The only clinical note submitted for review was dated 05/03/2021. Therefore, the injured person's status as of 04/28/2021 is unknown. There was mention of prior treatment with heat and "medicine". However, specific medications were not documented. The one clinical note submitted for review did not contain a physical examination. There was a lack of documentation of failure of first-line treatment to support the need for stimulation therapy from the unit provided on 04/28/2021. Therefore, the requested durable medical equipment and supplies is not medically necessary.

Based on the above, the IRO reviewer recommended that the Director uphold the Respondent's determination that the durable medical equipment and its related supplies provided to the injured person on April 28, 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 28, 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