

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

In the matter of:

Strength Training and Recovery
Petitioner

File No. 21-1647

v

Auto Owners Insurance Company
Respondent

Issued and entered
this 13th day of January 2022
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On October 18, 2021, Strength Training and Recovery (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 Auto Owners 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 Respondent issued the Petitioner written notices of the Respondent's determinations under R 500.64(1) on July 20, 2021, August 11, 2021, and September 16, 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 October 28, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on October 28, 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 November 17, 2021. The Department issued a notice of extension to both parties on December 21, 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 November 30, 2021.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for physical therapy treatments rendered on 14 days of service in May, June, July, and August 2021.¹ The Current Procedural Terminology (CPT) codes at issue include 97110, 97750, and 97530, which are described as therapeutic exercise, physical performance evaluation, and functional performance activities, respectively. In its determination, the Respondent referenced Official Disability Guidelines (ODG) relating to spinal cord injuries. The Respondent noted that the submitted medical records did not address complications, comorbidities, or treatment outcomes and that the requested treatment exceeded guidelines.

With its appeal request, the Petitioner submitted medical documentation which identified the injured person's diagnosis as quadriplegia, C1-C4 incomplete spinal cord injury (SPI) in relation to a motor vehicle accident (MVA) in March of 2007. The Petitioner stated in its supporting documentation that the injured person has been attending physical therapy intermittently since the MVA "to decrease his lower and upper extremity spasticity, improve his cervical range of motion and strength, diaphragmatic strength needed to drive his sip-n-puff wheelchair, and his ability to safely navigate his environment in his wheelchair."

The Petitioner further explained that the injured person's injury "renders him incapable of independently moving his arms, legs, or trunk" and that his "only option for volitional movements include moving his head and shrugging his shoulders." The Petitioner noted in its record dated August 26, 2021 that most of the injured person's services were cancelled due to the "auto no-fault laws changing" and his spasticity increased while he was not able to attend therapy. In addition, the Petitioner explained that the injured person has other conditions which complicate his progress, including difficulty breathing, skin integrity issues that need continuous monitoring, uncontrolled spasticity in his extremities, fluctuations in blood pressure, and dysreflexia.

The Petitioner's request for an appeal stated:

Although the typical recommended course of physical therapy is 8 visits over the course of 10 weeks, [the injured person] requires an increased number of visits due to the complexity of his condition and inability to safely perform an adequate home exercise program. Without continued skilled physical therapy, [the injured person] will see a decrease in his quality of life as well as a significant increase in his potential for further medical complications...Due to the nature of [his] injuries, he is incapable of being independent with his caretaking and requires skilled physical therapy services in order to perform exercises and other therapeutic interventions ... [C]ontinued physical therapy services are absolutely necessary for this [injured person's] medical condition.

¹ The dates of service at issue are May 27, 2021; June 1, 3, 8, 10, 24, and 29, 2021; July 1, 8, 13, and 29, 2021; and August 3, 5, and 26, 2021.

In its reply, the Respondent reaffirmed its position. The Respondent stated that a physical medicine and rehabilitation physician reviewed the treatment and charges in relation to the injured person's diagnosed C1-C4 SPI and resulting quadriplegia. In accordance with its reviewing physician's opinion, the Respondent explained that the treatments exceeded ODG guidelines and that "low-stress aerobic activities and stretching exercises could be initiated at home." The Respondent noted that a functional capacity evaluation of the injured person was unnecessary and stated that the injured person "has had extensive therapy with no sustained functional improvement over the past 14 years." The Respondent noted that the injured person had been treating with the Petitioner since 2015. The Respondent further stated:

[The Respondent] pays for professional 24-hour skilled agency care to assist [the injured person] with all activities of daily living...As [the skilled agency care provider] provides professional attendant care services to [the injured person] throughout the day, presumably his caregivers could be trained to facilitate a home exercise program as part of his daily care...The medical records and the provider's response do not support any evidence that there has been any attempt at collaboration or even a discussion between the [Petitioner] and the [skilled agency care provider] to facilitate a home exercise program.

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 reviewer concluded that, based on the submitted documentation, medical necessity was supported on the dates of service at issue and the treatment was not overutilized in frequency or duration based on medically accepted standards.

The IRO reviewer is a physician who is board-certified in physical medicine and rehabilitation and fellowship-trained in spine, sports, and musculoskeletal 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 MD Guidelines and Centers for Medicare and Medicaid Services (CMS) medical guidelines and medical literature concerning spinal cord injury in the geriatric population for its recommendation.

The IRO reviewer explained that the MD Guidelines indicate that "extension of therapy is recommended when functional progress has been made during initial therapy or when the injured person requires [a] maintenance therapy plan to prevent further deterioration or preserve existing function." The

IRO reviewer explained that “the documentation should identify that the injured person’s goals of therapy have not been met, the injured person is actively participating in treatment sessions, and the injured person is adherent to plan of care.”

Based on the medical record dated August 26, 2021, the IRO reviewer stated that the injured person had “decreased core/diaphragmatic strength, uncontrolled bilateral upper extremity, and bilateral lower extremity tone” and that his “spasticity had increased in his bilateral lower extremities and his cervical range of motion had decreased.” Further, the IRO reviewer stated that the injured person “had not made any significant progress towards his functional goals” due to poor attendance in physical therapy.

The IRO reviewer acknowledged that the injured person had a total of 78 visits of physical therapy. However, the IRO reviewer opined that the treatments at issue were warranted and medically necessary based on the injured person’s scenario and the continued functional deficits relating to his condition. The IRO reviewer stated:

[The injured person] had a regression of status that would need to be addressed with skilled physical therapy before transitioning back to his caregiver. The therapy is needed to prevent further deterioration. The patient’s goals have not been met. He is actively participating in treatment sessions and is adherent to the plan of care. As such, ongoing treatments are medically necessary.

Based on the above, the IRO reviewer recommended that the Director reverse the Respondent’s determination that the physical therapy treatments provided to the injured person on the dates of service at issue were medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director reverses the Respondent’s determinations dated July 20, 2021, August 11, 2021, and September 16, 2021.

Regarding the dates of service of May 27, 2021; June 1, 3, 8, 10, 24, and 29, 2021; and July 1, 2021, the Petitioner is entitled to payment in the full amount billed and to interest on any overdue payments as set forth in Section 3142 of the Code, MCL 500.3142. See R 500.65(6). Regarding the dates of service of July 8, 13, and 29, 2021; and August 3, 5, and 26, 2021, the Petitioner is entitled to reimbursement in the amount payable under MCL 500.3157 for the treatment on the dates of service discussed herein, and to interest on any overdue payments as set forth in Section 3142 of the Code, MCL 500.3142. R 500.65(6). The Respondent shall, within 21 days of this order, submit proof that it has complied with this order.

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:

X *Sarah Wohlford*

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford