

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

**In the matter of:**

██████████,  
**Petitioner,**

**v**

**McLaren Health Plan,**  
**Respondent.**

**File No. 147026-001**

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**Issued and entered**  
**this 14<sup>th</sup> day of May 2015**  
**by Randall S. Gregg**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On March 27, 2015, ██████████ (Petitioner) filed a request with the Director of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives group health care benefits as a member of McLaren Health Plan (McLaren), a health maintenance organization. The Director immediately notified McLaren of the external review request and asked for the information it used to make its final adverse determination. The Director received McLaren's response on April 1, 2015. After a preliminary review of the material submitted, the Director accepted the request on April 3, 2015.

Initially it appeared that the issue in this external review could be decided by the Director applying the terms of the contract that defines the Petitioner's health care benefits. MCL 500.1911(7). However, upon further review, the Director determined that this case would benefit from an evaluation by an independent review organization (IRO). It was assigned to an IRO on April 17, 2015, and the IRO provided its recommendation on May 11, 2015.

**II. FACTUAL BACKGROUND**

The Petitioner's health care benefits are defined in McLaren's *POS Certificate of Coverage* (the certificate).

The Petitioner was diagnosed with sleep apnea. After he tried using a CPAP (continuous positive airway pressure) machine without success, his sleep specialist recommended and prescribed a removable oral appliance (also called a “snore guard device”) to treat his condition.

The Petitioner obtained the appliance on November 25, 2014, and paid \$327.00 for it. He submitted a claim to Delta Dental, his dental care plan. According to the Petitioner, Delta Dental denied the claim on the basis that the oral appliance was a medical device.

The claim was then submitted to McLaren for reimbursement. McLaren also denied coverage, saying the oral appliance was a “dental appliance” and therefore not a medical benefit under the certificate.

The Petitioner appealed McLaren’s decision through its internal grievance process. At the conclusion of that process, McLaren issued a final adverse determination dated February 2, 2015, affirming its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

### **III. ISSUE**

Did McLaren correctly deny coverage for his oral appliance?

### **IV. ANALYSIS**

#### Petitioner’s Argument

On the request for external review form the Petitioner explained why he is seeking reimbursement for the dental snore guard:

My primary doctor . . . had me get tested for a sleep disorder. I was diagnosed with sleep apnea. . . . I was first given a CPAP machine to treat the sleep apnea; after trying different masks I could not sleep with the machine. [My sleep specialist] then instructed me to get another medical device from my dentist . . . to treat my sleep apnea. It is this medical device (which was originally billed to Delta Dental - denied as a medical device) they refuse to cover.

The Petitioner’s sleep specialist wrote on January 6, 2015:

Patient . . . has been having tolerance issues with CPAP therapy and CPAP mask. Dental device was discussed and recommended to this patient . . . if further complications were to arise and patient was unable to tolerate CPAP further. Patient continues to have difficulties and cannot wear CPAP, so therefore, a dental device is in the best interest to treat [the Petitioner’s] sleep apnea.

### McLaren's Argument

In its final adverse determination, McLaren explained its decision to deny coverage for the snore guard:

The McLaren Health Plan Appeals Committee has carefully reviewed the appeal request on February 2, 2015 for the . . . authorization for the Snore Guard appliance, which was filed by [the Petitioner] on January 9, 2015.

After reviewing the documentation provided, McLaren Health Plan is unable to approve this request. The reason for the denial is based on the following: The Snore Guard appliance is considered a dental appliance. Dental services are not a covered benefit under McLaren Health Plan.

### Director's Review

The Petitioner's sleep specialist, a doctor of medicine, recommended the oral appliance because the Petitioner "continues to have difficulties and cannot wear CPAP, so therefore, a dental device is in the best interest to treat [his] sleep apnea." The appliance was crafted by a dentist and billed under dental procedure code D5899, "unspecified removable prosthodontic procedure," a code used for a prosthodontic procedure "that is not adequately described by another code."

McLaren denied coverage for the appliance, saying it was a "dental appliance." Dental appliances are specifically excluded from coverage (certificate, pp. 36, 42).<sup>1</sup> The Petitioner contends that the device serves a medical purpose (treating his sleep apnea) and should be covered by McLaren as a medical benefit.

To help the Director answer the question of whether the oral appliance was necessary to treat a medical condition, the case was assigned to an independent review organization (IRO). The IRO physician consultant is board certified in neurology and sleep medicine and has been in practice for more than ten years. The IRO report included this analysis and recommendation:

#### **Recommended Decision:**

The MAXIMUS physician consultant determined that the oral appliance (snore guard device) that the member received was medically necessary for treatment of his condition.

#### **Rationale:**

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<sup>1</sup> "Dental appliance" is not defined in the certificate.

The MAXIMUS independent physician consultant, who is familiar with the medical management of patients with the member's condition, has examined the medical record and the arguments presented by the parties.

The results of the consultant's review indicate that this case involves a 42 year-old male who has a history of obstructive sleep apnea. At issue in this appeal is the request for coverage of the oral appliance that the member received.

The member has polysomnographically proven moderate to obstructive sleep apnea. A polysomnography performed on 3/19/14 revealed an apnea hypopnea index (AHI) of 28 and minimum oxygen saturation of 83%. According the letters of appeal submitted by the member and his physician, he has tried CPAP and had multiple adjustments to this therapy, but could not tolerate it.

The MAXIMUS physician consultant explained that an oral appliance is an accepted therapeutic option for obstructive sleep apnea. The physician consultant also explained that an oral appliance can be indicated for either mild sleep apnea or for more severe cases when CPAP is not tolerable. [References omitted] The physician consultant indicated that although the oral appliance is fashioned most often by a dentist, it is generally considered a medical treatment and is billed under medical insurance. In this case, the consultant explained that because the member had CPAP intolerance, use of an oral appliance was medically reasonable and indicated.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the recommendation is afforded deference by the Director. In a decision to uphold or reverse an adverse determination the Director must cite "the principal reason or reasons why the [Director] did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on experience, expertise, and professional judgment. In addition, the IRO recommendation is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO's recommendation should be rejected in this case, finds that the Petitioner's oral appliance was medically necessary to treat a medical condition and not a "dental appliance" as that term is used in the certificate.

#### **V. ORDER**

The Director reverses McLaren's February 2, 2015, final adverse determination.

Pursuant to section 1911(17) of the Patient's Right to Independent Review Act, MCL 550.1911(17), McLaren shall immediately approve coverage for the Petitioner's oral appliance,

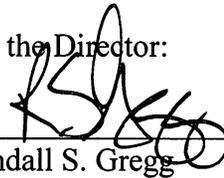
and shall, within seven days of providing coverage, furnish the Director with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, toll free at (877) 999-6442.

This is a final decision of an administrative agency. Any person aggrieved by this order may seek judicial review no later than sixty days from the date of this order in the circuit court for the Michigan county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Annette E. Flood  
Director

For the Director:



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Randall S. Gregg  
Special Deputy Director