

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

In the matter of:

██████████,

Petitioner,

v

File No. 154447-001

Assurity Life Insurance Company,

Respondent.

Issued and entered
this 27th day of July 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for treatment of an infection after she had breast reduction surgery. Her health insurer, Assurity Life Insurance Company (Assurity), said the treatment was excluded from coverage.

On July 5, 2016, the Petitioner filed a request with the Director of Insurance and Financial Services for an external review of Assurity's denial under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Petitioner receives health care benefits under a grandfathered group plan underwritten by Assurity. The Director immediately notified Assurity of the external review request and asked for the information it used to make its final adverse determination. Assurity submitted the information on July 6, 2016.¹ After a preliminary review of the material submitted, the Director accepted the external review request on July 12, 2016.

The issue in this external review can be decided by a contractual analysis. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

¹ Group Marketing Services, Inc., provides administrative services to Assurity and responded to the external review notice.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in a certificate of group insurance issued by Assurity (the certificate).

In January 2016, the Petitioner had breast reduction surgery. Between February 6 and February 11, 2016, she received medical treatment for an infection in her right breast at the site of the surgery. Assurity said the care for the infection was excluded from coverage.

The Petitioner appealed the denial through Assurity's internal grievance process. At the conclusion of that process, Assurity issued a final adverse determination dated June 7, 2016 affirming its original decision. The Petitioner now seeks a review of that final adverse determination by the Director.

III. ISSUE

Did Assurity correctly deny coverage for the treatment of the Petitioner's infection from February 6, 2016 and February 11, 2016?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination, Assurity told the Petitioner:

Based on the records reviewed you had a breast reduction on 1/7/2016. You noted signs of an infection at the surgical incision on 2/6/2016, described as pain and thick drainage. This happened after the cosmetic surgery and the signs of infection are noted directly at the surgical site. This infection is directly related to in an incompletely healed surgical wound from the cosmetic surgery that is specifically excluded in the plain language of the Plan. You would not have gotten the infection if you did not have the elective, cosmetic, surgery. Based on the information received the treatment and services you received on 2/6/2016 and 2/9 – 2/11/2016 are excluded as an Allowable Expense of the Plan. . . . It is unfortunate a more favorable outcome could not be reached.

Petitioner's Argument

In a June 1, 2016 note, included with the external review request, a nurse described the Petitioner's situation:

[The Petitioner] had a breast reduction / lift done on 1/7/16. She noted signs of an infection on 2/6/16 which are described as pain and thick drainage from her surgical scar. This happened 4 weeks after surgery, and the signs of infection

are noted directly at the surgical site. A surgical wound forms new tissue or what is called granulation tissue during the proliferative phase of healing that lasts for 3-4 weeks after the Incision is made. The wound then enters the remodeling phase which takes from 6 months to years to complete, and heal the wound. The Infection occurred due to an opening in the skin caused by surgical Instrumentation allowing an entry point for bacteria in the environment. This infection is directly related to an incompletely healed surgical wound from a cosmetic surgery.

The hospital stay did not report that [the Petitioner] had a change in white blood cell count from a normal white blood cell count. She had no elevation in temperature or body rigors. She had no erythema noted at the wound site on examination. She had a normal ultrasound of the area on 2/10/16. The only drainage reported is what this individual expressed from the wound at home. This was reported to be a 1cm ulceration. This Infection would not qualify as cellulitis or an abscess and would be treatable with oral antibiotics at home, not intravenous antibiotics in a hospital setting.

Cellulitis involves spreading erythema and edema, warmth, fever, chills, raise in white blood cell count, drainage of a wound. Abscess involves raised red warm area with drainage. Her wound description in the clinical did not fit either of these.

Director's Review

The certificate (pp. 29, 32) has this exclusion related to cosmetic services and treatment:

. . . Unless otherwise specified under any benefit provision in the Insurance Plan, NO payment will be made under the Insurance Plan for Expenses Incurred by any Insured Person for the following situations:

* * *

- 27) for cosmetic care or treatment, including treatment by non-surgical means, or surgical means, including for the complications, revision or repair of such treatment or surgery, or for the purpose of treating a Sickness or Injury caused by, complicated by, or exacerbated by such treatment and any related care or treatment including complications of any such treatment (UNLESS it is necessary to ameliorate a functionally impairing deformity arising from or directly related to: (a) congenital abnormality of a Child, who was an insured Person continuously from birth, or (b) an Injury or disfiguring Sickness which occurred while you were an Insured Person). This includes, but is not limited to the following care, treatment or surgery that is not covered: a) surgery to the upper and lower eyelid; b) penile implant; c) augmentation mammoplasty, or reduction mammoplasty; d) full or partial facial lift; e) derma or chemabrasion; f) scar revision; g) otoplasty;

h) lift, stretch, or reduction of abdomen, buttocks, thighs or upper arms; i) silicone injections; j) rhinoplasty, unless such treatment is for repair or disfigurement resulting from Accidental Injury occurring while insured under this Plan and such treatment is begun within 90 days of such Injury sustained; k) wigs and any treatment for baldness; l) dermatological light therapy / treatment; m) teeth whitening;

There is no dispute that the Petitioner had cosmetic surgery in January 2016. Based on the provision quoted above, any medical care required because of complications from that surgery is excluded from coverage. While the treatment she received from February 6 through February 11, 2016, may have been medically necessary, the Petitioner offered nothing to show that it was not "caused by, complicated by, or exacerbated by" the cosmetic surgery in January 2016. Moreover, the June 1, 2016 note from the nurse explained that the Petitioner's infection was "directly related to an incompletely healed surgical wound from a cosmetic surgery."

The Director finds that Assurity's denial of coverage was in accord with the terms and conditions of the certificate.

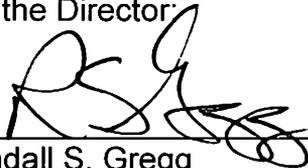
V. ORDER

The Director upholds Assurity's final adverse determination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the Michigan county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Director of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin
Director

For the Director:



Randall S. Gregg
Special Deputy Director