

**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. 150678-001**

**Consumers Mutual Insurance Company**  
**Respondent**

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Issued and entered  
this 10<sup>th</sup> day of December 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

On November 2, 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 (PRIRA), MCL 550.1901 *et seq.*

The Petitioner receives health care benefits through an individual plan underwritten by Consumers Mutual Insurance of Michigan (Consumers Mutual). Consumers Mutual was placed in rehabilitation on November 13, 2015 by order of the Circuit Court for the 30<sup>th</sup> Judicial Circuit (Ingham County Circuit Court). By the terms of that order, the business operations of Consumers Mutual are now conducted under the supervision of the Director of the Department of Insurance and Financial Services. The November 13 order does not impair the Petitioner's ability to pursue an external review under the PRIRA. Any other impact the November 13 order may have on the Petitioner's rights as a Consumer Mutual's insured are beyond the scope of this PRIRA order.

Consumers Mutual was notified of the request for an external review and asked to submit the information used to make its final adverse determination. On November 9, 2015, Consumers Mutual provided its response and after a preliminary review of the information submitted, the Director accepted the case for review.

This case presents an issue of contractual interpretation and can be decided by applying the terms of the certificate. The Director reviews contractual issues pursuant to section 11(7) of the PRIRA, MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

## II. FACTUAL BACKGROUND

On April 8 and April 29, 2015, the Petitioner had surgery at [REDACTED] in [REDACTED] Michigan. The anesthesia services on both occasions were performed by [REDACTED], a certified nurse anesthetist (CRNA). The anesthesia charge for April 8 was \$2,684.00. The charge for April 29 was \$3,354.00. Consumers Mutual paid what it called its “reasonable and customary” amount: \$513.19 for the April 8 anesthesia and \$718.47 for the April 29 anesthesia. (The Petitioner does not dispute the claim payments for the other surgery charges.)

The Petitioner appealed Consumers Mutual’s benefit determination through its internal appeals process. At the conclusion of that process, Consumers Mutual issued a final adverse determination dated October 20, 2015, affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.

## III. ISSUE

Did Consumers Mutual correctly process the claim for the Petitioner’s anesthesia services at the non-participating provider level?

## IV. ANALYSIS

### Respondent’s Argument

In its final adverse determination, Consumers Mutual wrote:

Our investigation revealed that [REDACTED] is an out-of-network anesthesiologist and is a non-participating provider. This means that CMI does not have a contract with him and there are no negotiated rates between [REDACTED] and CMI. Therefore, CMFs payment for the services he rendered during your care is established by calculating the Reasonable and Customary Charge for those services.

Pursuant to your certificate of coverage which reads in pertinent part on page 29, "A Non-Participating Provider may bill you for the difference between the Provider's charge and the Reasonable and Customary Charge." CMI does not have any control on the amount a nonparticipating provider charges and they are able to balance bill you if there are any charges remaining following CMFs payment for the Reasonable and Customary Charge for those services. Unfortunately, it is also out of CMFs control as to whether or not an in-network facility appoints an out-of-network provider to perform services. Because there is no contract in place between CMI and [REDACTED] we cannot apply a negotiated amount since no negotiated amount was established. Your Explanation of Benefits lists an ineligible amount because that is the amount above the Reasonable and Customary Charge we paid.

Therefore, our Committee has determined that we have paid our responsibility with this claim and will not be paying any additional amount. We encourage you to contact your provider regarding the amount charged and .your payment responsibility.

Petitioner's Argument

In a letter to DIFS dated October 28, 2015 filed with the request for external review, the Petitioner wrote:

The two benefit claims I am disputing are listed below and I have enclosed copies of the explanations. They are:

<u>Claim #</u>	<u>Date of Service</u>	<u>Amount</u>
50092257-01	04-08-15	\$2,684.00
50098195-02	04-29-15	\$3,354.00

Both of these charges are for services provided to me by a certified registered nurse anesthetist during operations at [REDACTED] in [REDACTED] MI, which is an in network facility and participating provider with CMI. You will see on the copies, the services were deemed ineligible.

\* \* \*

CMI is stating their investigation revealed that [REDACTED] is an out of network and non-participating provider. [REDACTED] in neither a doctor or a non-participating provider. He is employed by OSF [REDACTED] as a certified registered nurse anesthetist and is not personally charging anything. The payments of \$513.19 and \$718.47 made by CMI on the above claims were payable to [REDACTED], not [REDACTED]. I have enclosed copies of my bills showing that these charges are a portion of my total bill from [REDACTED].

Director's Review

Under the terms of the certificate (pages 28-29), Consumers Mutual pays claims based on the network status of the provider. While preferred providers have contracted with the Consumers Mutual network to accept negotiated rates for their services, non-participating providers, like the anesthesiologist here, have not. See section 7(D) of the certificate of authority (page 28).

For nonparticipating providers, Consumers Mutual sets its payable amount for covered services using a "reasonable and customary" amount which is defined in the certificate of coverage (page 41):

Except as otherwise specified in this plan, the maximum amount Consumers Mutual will allow for Non-Participating Providers for any Covered Services, will be the lesser of: (a) the Provider's usual charge for furnishing the service; or (b) the charge we determine to be the prevailing charge level for the service or supply. Criteria considered in setting the Reasonable and Customary Charge for a particular service or supply may include the complexity of the service, the degree of skill required, the range of services provided by a facility, and regional variations.

Consumers Mutual determined that the reasonable and customary amount for the Petitioner's anesthesia services was \$1,359.96. The Director has no basis under the certificate of coverage or state law to require Consumers Mutual to pay a larger amount for these claims.

The Petitioner also argues the anesthesia services are part of the hospital charges as reflected in the bill from [REDACTED] and, consequently, [REDACTED] must be considered a participating provider. The Explanation of Benefits (EOB) statements sent to the Petitioner lists “[REDACTED], CRNA” as the provider. The EOB also indicates that Consumers Mutual’s payment was made, for both anesthesia claims, to “[REDACTED].” Consumers Mutual stated in its final adverse determination that [REDACTED] is not a participating provider. The evidence of payment being made to [REDACTED] does not establish that [REDACTED] is a participating provider. Since Consumers Mutual determines which providers are participating, in-network providers, its statement that [REDACTED] does not have that status must be considered definitive. The Director concludes that [REDACTED] is not a member of Consumers Mutual’s provider network.

The Director finds that Consumers Mutual processed the claim for the Petitioner’s anesthesia services in a manner consistent with the terms of the certificate of coverage.

#### V. ORDER

Consumers Mutual Insurance Company’s October 20, 2015 final adverse determination is upheld. Consumers Mutual is not required to pay any additional amount for the Petitioner’s anesthesia services.

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 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, Health Care Appeals Section, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin  
Director

For the Director:



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Randall S. Gregg  
Special Deputy Director