

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. 147413-001

Guardian Life Insurance Company,

Respondent.

Issued and entered
this 19th day of May 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On April 17, 2015, ██████████, DDS, authorized representative of his patient ██████████ (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 has dental coverage through a group plan underwritten by Guardian Life Insurance Company of America (Guardian). The Director immediately notified Guardian of the external review request and asked for the information it used to make its final adverse determination. Guardian's response was received on April 21, 2015, and the Director accepted the external review request on April 24, 2015.

To address the medical issues in the case, the Director assigned it to an independent medical review organization which provided its analysis and recommendation to the Director on May 13, 2015.

II. FACTUAL BACKGROUND

The Petitioner's dental benefits are defined in a certificate of group insurance issued by Guardian (the certificate).

The Petitioner's periodontist asked Guardian to authorize osseous surgery in the lower right quadrant (dental code D4261), a bone graft in the area of tooth #31 (dental code D4263), and a gingival graft on tooth #27 (dental code D4273). Guardian denied the request on the basis that these services are not medically (dentally) necessary to treat the Petitioner's condition.

The Petitioner appealed the denial through Guardian's internal appeals process. At the conclusion of the internal appeals process, Guardian issued its final adverse determination dated March 10, 2015, affirming its denial of coverage. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did Guardian correctly deny coverage for the Petitioner's periodontal services?

IV. ANALYSIS

Petitioner's Argument

The external review request form contained this statement:

Patient needs pocket reduction surgery lower right quadrant tooth #31. Insurance (Guardian) will not approve procedure. Our Doctor wrote an explanation as to why this surgery is necessary. We also sent x-rays & perio charting to support the request - Guardian still refuses to pay for surgery.

Also included with the external review request was a letter dated January 15, 2015, from the Petitioner's periodontist explaining the medical necessity of the proposed treatment:

On January 14, I examined [the Petitioner]. . . .

My periodontal examination revealed an intact second molar dentition which was found to be stable and in good repair. There is a Class 3 cuspid relationship noted with bilateral balancing interferences. His oral hygiene was judged to be good with slight accumulations of plaque and calculus. The gingival tissues displayed recession, they were firm with slight inflammation.

The focus of my examination was #27 where there is recession with limited attached gingiva. I discussed with [the Petitioner] the protocol for placing a free gingival graft in this area to help cover the exposed root surfaces and stabilize the dental/gingival junction. I also noted a deep 6-7mm pocket on the distal of #31 which radiographically displays an angular defect with the possible etiology that this occurred following extraction of the wisdom tooth. [The Petitioner] has requested preauthorization of insurance benefits.

Respondent's Argument

In its final adverse determination Guardian said:

Coverage for these services were denied.

For the following teeth and/or quadrants: LR

- The bone level, pocket depth and gingival attachment appear to be within normal limits.

For the following teeth and/or quadrants: 31

- The bone contour appears to provide adequate support.

In a letter dated April 21, 2015, submitted for the external review, Guardian again explained the reasons for its denial:

Two claim reviews have been performed on these procedures. Based on review of the clinical information provided, in both reviews the consultants advised that there appears to be no pocket depths or loss of bone level requiring osseous surgery in the lower right quadrant; and the bone contour in the area of tooth 31 appears to provide adequate support. According to the terms of the plan Guardian issued benefit predetermination denials on 2/5/2015 and 3/10/2015.

Director's Review

The certificate covers periodontal surgery such as the Petitioner's proposed treatment procedures when they are medically necessary. The benefit is described in the certificate (pp. 40-41):

Allowance includes the treatment plan, local anesthetic and post-surgical care. Requires documentation of periodontal disease confirmed by both radiographs and pocket depth probings of each tooth involved.

The following treatment is limited to a total of one of the following, once per tooth in any 12 consecutive months.

Gingivectomy, per tooth (less than 3 teeth)

Crown lengthening – hard tissue

The following treatment is limited to a total of one of the following once per quadrant, in any 36 consecutive months.

Gingivectomy or gingivoplasty, per quadrant

Osseous surgery, including scaling and root planing, flap entry and closure, per quadrant

Gingival flap procedure, including scaling and root planing, per quadrant

Distal or proximal wedge, not in conjunction with osseous surgery

Surgical revision procedure, per tooth

The following treatment is limited to a total of one of the following, once per quadrant in any 36 consecutive months.

Pedicle or free soft tissue grafts, including donor site, or subepithelial connective tissue graft procedure, when the tooth is present, or when dentally necessary as part of a covered surgical placement of an implant.

The following treatment is limited to a total of one of the following, once per area or tooth, per lifetime.

Guided tissue regeneration, resorbable barrier or nonresorbable barrier

Bone replacement grafts, when the tooth is present.

The question of whether the procedures were medically (dentally) necessary was presented to an independent review organization (IRO) for analysis and a recommendation as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO dentist consultant is board certified in periodontology, has been in practice for more than 15 years, and is familiar with the medical management of patients with the Petitioner's condition. The IRO report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS dentist consultant determined that the gingival grafting of tooth #27, osseous surgery in the lower right quadrant and a bone graft in the area of tooth #31 are medically/dentally necessary for treatment of the member's condition.

Rationale:

* * *

According to the member's periodontal chart, he has a 7mm pocket on the distal aspect of tooth #31 and a 4mm recession of the facial of tooth #27. The MAXIMUS dentist consultant indicated that the radiograph of tooth #31 shows an angular defect on the distal aspect. The dentist consultant explained the treatment is medically necessary for treatment of these findings are osseous surgery for tooth #31 (lower right quadrant) with a bone graft on the distal aspect of tooth #31 and a soft tissue graft for root coverage and enhancement of the gingival width of the buccal of tooth #27.

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 extensive experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to any provision of the certificate. MCL 550.1911(15).

The Director, discerning no reason why the IRO's recommendation should be rejected, finds that the gingival grafting of tooth #27, osseous surgery in the lower right quadrant, and a bone graft in the area of tooth #31 are medically necessary and are therefore covered benefits.

V. ORDER

The Director reverses Guardian Life Insurance Company's March 10, 2015, final adverse determination.

Guardian shall, within 60 days of the date of this Order, cover the requested periodontal procedures, and shall, within seven days of providing coverage, furnish the Director with proof it has complied with 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, at this toll free number: (877) 999-6442.

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 Department 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