

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. 148434-001

Guardian Life Insurance Company of America,

Respondent.

Issued and entered
this 24th day of July 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 22, 2015, ██████████ authorized representative of ██████████ (Petitioner),¹ 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 dental coverage as a dependent through a group plan that is 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 furnished the information on June 24 and 29, 2015. After a preliminary review of the material submitted, the Director accepted the request on June 29, 2015.

II. FACTUAL BACKGROUND

The Petitioner's dental benefits are defined in a certificate of group insurance issued by Guardian entitled "Your Group Insurance Plan Benefits" (the certificate).

On January 19, 2015, the Petitioner had existing crowns on teeth #8 and #9 removed. He then had crown (or core) buildups on both teeth and new crowns placed. When Guardian denied coverage for this dental care, the Petitioner appealed through its internal grievance process.

¹ The Petitioner is a minor ██████████ His mother authorized ██████████ to represent him in this external review.

According to Guardian, all four procedures (two crown buildups and two new crowns) were the subject of the internal grievance. However, at the conclusion of the grievance process Guardian only issued a final adverse determination for the crown buildup on tooth #9 (dated May 13, 2015) even though an explanation of benefits statement also dated May 13, 2015, made clear that Guardian had maintained its denial of coverage for all four procedures.

The Petitioner filed this external review request after receiving the May 13, 2015, final adverse determination. Guardian subsequently issued a new final adverse determination dated July 22, 2015, upholding its denial of coverage for all four procedures. As a result, the Director will review Guardian's denial of the four procedures in the July 22, 2015, final adverse determination.

III. ISSUE

Did Guardian correctly deny coverage for the Petitioner's crown buildups and new crowns?

IV. ANALYSIS

When the Director preliminarily reviewed the material submitted for this external review, it appeared that the denial of coverage was based, at least in part, on whether the Petitioner's treatment was medically (dentally) necessary and would require a review by an independent review organization (IRO) under section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The case was assigned to an IRO because the final adverse determination dated May 13, 2015, raised a medical question when it said that coverage was denied because tooth #9 appeared "to have sufficient tooth structure remaining to provide adequate support and retention for an indirect restoration." Moreover, the Petitioner's authorized representative also framed the issue as one of medical necessity on the external review request form:

Dr. did core build-ups on teeth #8 and #9 with all porcelain crowns. Guardian is denying build-up on #9 saying [patient] had adequate tooth structure. While [patient's existing tooth was stable, the tooth had an existing crown from 2009 that was placed when the [patient] was 10 years old. When old crown removed, the tooth needed a core to recontour tooth to hold new crown.

The IRO submitted its analysis and recommendation to the Director on July 13, 2015. However, a complete review of the case has led the Director to conclude that it can be resolved by reviewing the contractual provisions of the Petitioner's dental plan without the need for review by an IRO. See MCL 550.1911(7).

A

Guardian covers medically necessary crown buildups and crowns under "major restorative services." The coverage is described in the certificate (p. 39):

Crowns . . . and crown buildups are covered only when needed because of decay or injury, and only when the tooth cannot be restored with amalgam or composite filling material.

But the certificate also has this exclusion (pp. 31, 32):

We will not pay for:

* * *

- Replacing an existing appliance or dental prosthesis² with a like or un-like appliance or dental prosthesis; unless (1) it is at least 10 years old and is no longer usable; or (2) it is damaged while in the covered person's mouth in an injury suffered while insured, and can't be made serviceable.

The Petitioner had the original crowns placed in June 2009 so they would not be eligible for replacement until June 2019 unless they were damaged by injury. According to the Petitioner's authorized representative, the original crowns had to be replaced not because of injury but because subsequent eruption of the teeth caused "the margins of the crowns to be mid-facial, approximately 3mm above gum line, allowing for stain, decay and plaque to accumulate." Therefore, Guardian correctly denied coverage for the placement crowns.

Because the replacement crowns are not a covered benefit, the crown buildups for those teeth are also not covered. The certificate (p. 39) explains that buildups are covered "only when done in conjunction with a covered unit of crown or bridge and only when necessitated by substantial loss of natural tooth structure." The Director concludes that Guardian correctly denied coverage for the Petitioner's crown buildups and crowns because they are excluded under the terms of the certificate.

B

Although the Director has decided this case on other grounds as explained above, the IRO report recommended that Guardian's denial be upheld on an alternative basis.

The IRO reviewer is a licensed dentist in active practice who is familiar with the medical management of patients with the Petitioner's condition. The IRO report said:

Summary: The core buildups and placement of crowns for teeth #8 and 9 on 1/19/15 were not medically/dentally necessary for treatment of the member's condition.

* * *

Rationale:

* * *

According to the records provided for review, the member had crowns placed in 2009, approximately 6 years prior to the replacement on 1/19/15. The MAXIMUS dentist

2 A crown is included in the definition of "dental prosthesis" (certificate, p. 50).

consultant explained that while a notation was made of recurrent caries, the radiographs provided for review did not demonstrate extensive caries. According to the appeal letter, notes and radiographs submitted in support of this request, after the crowns were placed in 2009, the member's teeth continued in their normal eruption of approximately 3mm, leading to exposed metal margins, plaque and stain accumulation and recurrent caries. The dentist consultant noted that plaque, stain and exposed margins are aesthetic concerns that could warrant replacement of crowns. However, the consultant explained that with minimal recurrent caries documented on radiograph in this case, the aesthetic compromise does not satisfy the definition of medical necessity.

The dentist consultant indicated that as the former crown margins were approximately 3mm supragingival, aesthetics would dictate that the new crowns be placed near to the gum line. Current aesthetic ceramic materials for crowns require the crown walls to be minimally one to two millimeters thick for strength of material. Recurrent decay around an existing crown occurs at the crown margin, meaning that when old crowns are removed, the tooth surface at this previous margin area would need to be reduced by 2 mm to allow for crown fabrication. The MAXIMUS dentist consultant explained that there is no indication in the information provided for review that there was not adequate remaining tooth structure after removal of the existing crowns to allow for placement of new aesthetic crowns in this case.

Although the Director is not required to accept the IRO's recommendation, *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008), 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's recommendation is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15). The Director can discern no reason why the IRO's recommendation should be rejected in the present case.

The Director accepts the IRO report's conclusion that the crown buildups and crowns on teeth #8 and #9 were not dentally necessary and therefore are not covered benefits under the terms of the certificate.

V. ORDER

The Director upholds Guardian's July 22, 2015, 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 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 Michigan 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