

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

In the matter of:

██████████
Petitioner

v

Health Alliance Plan of Michigan
Respondent

File No. 153285-001

Issued and entered
this 2nd day of June 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. BACKGROUND

On April 18, 2016, ██████████ (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 health coverage from Health Alliance Plan of Michigan (HAP), a health maintenance organization. The Director notified HAP of the external review request and asked for the information it used to make its final adverse determination. HAP provided its response on April 20, 2016. On April 25, 2016, after a preliminary review of the material submitted, the Director accepted the request.

Because the case involves medical issues, it was assigned to an independent medical review organization which provided its analysis and recommendation to the Director on May 19, 2016.

II. FACTUAL BACKGROUND

The Petitioner is 62 years old and has an inguinal hernia, obstructive sleep apnea (OSA), hepatitis C, prostatitis and benign prostatic hyperplasia (BPH). His urologist recommended that he have his hernia surgically repaired using a technique known as an open, meshless repair performed under local anesthesia. The Petitioner was referred to a HAP network surgeon for consultation. The doctor told the Petitioner that he no longer performed the requested surgery.

The Petitioner requested a referral from HAP to another network surgeon but HAP identified no other surgeons who were in-network and could perform the requested surgery.

The Petitioner's primary care physician requested HAP provide coverage for the surgery to be performed at Shouldice Hospital in Ontario, Canada. HAP denied the request.

The Petitioner appealed the denial through HAP's internal grievance process. At the conclusion of that process, HAP issued a final adverse determination dated February 19, 2016, affirming the denial. The Petitioner now seeks the Director's review of that denial.

III. ISSUE

Did HAP properly deny coverage for the Petitioner's open, non-mesh inguinal hernia repair with local anesthetic?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination to the Petitioner, HAP stated:

We upheld the denial for Inguinal Hernia Surgery to be performed at Shouldice Hospital because surgical services meeting the standard of care in the U.S.A. for Inguinal Hernia Surgery can be provided in Plan, with a HAP contracted provider. In addition, your HMO Subscriber Contract excludes care by non-affiliated providers except for urgent or emergency care, or when approved In advance by HAP. Therefore, the denial for elective Hernia Surgery at Shouldice Hospital in Ontario, Canada is maintained.

Petitioner's Argument

In his request for an external review, the Petitioner wrote:

Below is a recap of the denial from HAP regarding my inguinal hernia repair recommended by my In-Plan primary care physician based on medical necessity, please note the following.

- 1) 1st Appeal – HAP indicated that the procedure recommended by my primary care physician could be performed in plan. My primary care physician is recommending for my inguinal hernia surgery an Open, Non-Mesh Repair, with local Anesthetic. When I asked HAP for a doctor's name in plan and HAP said Dr. [REDACTED]. I indicated that I had already seen Dr. [REDACTED] and he said he only does not perform the surgery himself but only provides oversight in a teaching capacity. When I asked HAP for the name of another doctor that could perform the open, non-mesh repair with local anesthetic in-plan the HAP representative said there wasn't one.

- 2) 2nd Appeal – HAP upheld the denial for Inguinal Hernia Surgery stating that surgical services meeting the standard of care could be provided In-Plan. HAP is not taking into consideration my In-Plan primary care doctor's recommendation predicated on my other health problems. The conventional treatment for an inguinal hernia repair in-plan includes the use of mesh. Please see the attached additional supporting documentation....Letter from to my In- Plan primary care physician (submitted previously) and a letter from my In-Plan urologist...and other references indicating the use of mesh for inguinal hernia repair can be problematic in future prostate surgery. My urologist...has mentioned to me the possibility of me requiring prostate surgery in the foreseeable future as I keep getting re-occurring bladder infections and episodes of not being able to urinate....

In Summary – Since HAP can't provide me the name of a physician that can perform the type of inguinal hernia surgery based on my In-Plan primary care doctor's recommendation predicated on my other health issues in Plan...I would like to request that the State Of Michigan Insurance Division rule that HAP cover the cost of my inguinal hernia surgery out of network. (Not to exceed the current in network rate.) There are out of network medical doctors that I've located that can perform the type of inguinal hernia surgery recommended by my in-plan primary care physician. Example: Shouldice, Cleveland Clinic and the Hernia Center of Ohio.

In a statement dated October 1, 2015, the Petitioner's primary care physician wrote:

[Petitioner] has an inguinal hernia (left side) that requires surgery. I am recommending that he have the surgery at Shouldice Hospital in Ontario, Canada based on his other medical conditions of BPH (benign prostatic hyperplasia) &OSA (obstructive sleep apnea).

The Shouldice technique uses natural tissue repair as opposed to the mesh repair used in the USA. Total cost from Shouldice Hospital is \$6,000

The use of mesh can be troublesome in older patients for men if urological or prostate surgery is required in the future.

95% of Shouldice hernia repairs use a local anesthetic versus a general anesthetic used in the USA for mesh repair. There is a less chance of complications with a local anesthetic in patients with OSA.

Director's Review

Two medical questions in this appeal were presented to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The reviewer was asked to address 1) whether an open, non-mesh inguinal hernia repair with local anesthetic is standard of care treatment and, if so, 2) whether the procedure is medically necessary for the treatment of Petitioner's condition.

The IRO reviewer is a physician who is board certified in general surgery and critical care, has been active practice for more than 12 years, and is familiar with the medical

management of patient's with the Petitioner's condition. The IRO reviewer's report included the following analysis and recommendation:

[O]pen meshless hernia repair surgery is the procedure that preceded mesh repair. The Shouldice technique is one method of open hernia repair and is older than mesh repairs....[O]pen meshless repair is one of the standards of care, albeit not performed as frequently as mesh repair at this time....[T]here are times that a meshless repair is performed and the member's physicians are stating that this is the case for him....[W]hile either type of repair might be disrupted by a future pelvic procedure, the mesh repair would be more complicated to manage....[O]pen meshless repair under local anesthesia is an acceptable standard of care, particularly for a patient, such as this member, who has obstructive sleep apnea as it allows for avoidance a general anesthesia which other approaches, such as a laparoscopic approach would require....[I]t appears that medical necessity for surgical treatment of the member's hernia has been established from the provided records, and open meshless repair under local anesthesia would be an acceptable approach for him.

Pursuant to the information set forth above and available documentation...an open, non-mesh inguinal hernia repair with local anesthetic is medically necessary for treatment of the member's condition.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the IRO's 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 Petitioner's coverage. MCL 550.1911(15). The Director, discerning no reason why the IRO's recommendation should be rejected in the present case, finds that an open, non-mesh inguinal hernia repair with local anesthetic is medically necessary for treatment of the member's condition, and therefore is a covered benefit under his HAP benefit plan.

While finding an open, non-mesh inguinal hernia repair with local anesthetic is medically necessary for the treatment of Petitioner's condition, the Director does not require that HAP provide coverage for the surgery at the facility in Canada. HAP must identify whether its provider network includes a surgeon who can meet the Petitioner's treatment needs. In the event no such provider is available within the HAP network, HAP must provide coverage for the treatment at a non-network facility. See section 3530 of the Michigan Insurance Code, MCL 500.3530 which provides:

(1) A health maintenance organization shall maintain contracts with those numbers and those types of affiliated providers that are sufficient to assure that covered services are available to its enrollees without unreasonable delay....

(2) If a health maintenance organization has an insufficient number or type of participating providers to provide a covered benefit, the health maintenance organization shall ensure that the enrollee obtains the covered benefit at no greater cost to the enrollee than if the benefit were obtained from participating providers, or shall make other arrangements acceptable to the [director].

V. ORDER

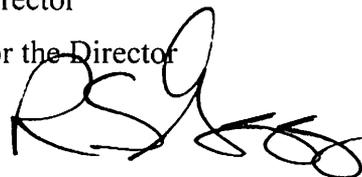
The Director reverses HAP's final adverse determination, dated February 19, 2016. HAP shall provide coverage for an open, non-mesh inguinal hernia repair with local anesthetic for the Petitioner, either from an in-network surgeon or from a non-network surgeon at no greater cost to the Petitioner. HAP shall, within seven days of providing coverage, furnish the Director with proof it implemented this order.

To enforce this order, the Petitioner may report any complaint regarding the implementation to the Department of Insurance and Financial Services, Health Care Appeals Sections, at this toll free telephone 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 sixty 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 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