

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. 148138-001

Total Health Care USA, Inc.,

Respondent.

Issued and entered
this 1st day of July 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 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, MCL 550.1901 *et seq.* On June 9, 2015, after a preliminary review of the material submitted, the Director accepted the request.

The Petitioner receives group health care benefits from Total Health Care, USA, Inc. (THC), a health maintenance organization. The Director immediately notified THC of the external review request and asked for the information it used to make its final adverse determination. THC provided its response on June 17, 2015.

This case involves medical issues. Therefore, the Director assigned it to an independent review organization which submitted its recommendation on June 23, 2015.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in THC's *HMO Certificate of Coverage* (the certificate).

The Petitioner requested authorization for a bilateral reduction mammoplasty (breast reduction surgery). THC denied the request, saying that the surgery was not medically necessary to treat the Petitioner's condition.

The Petitioner appealed the denial through THC's internal grievance process. At the conclusion of this process, THC issued a final adverse determination dated March 25, 2015, upholding its denial. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did THC properly deny prior authorization for Petitioner's proposed breast reduction surgery?

IV. ANALYSIS

Petitioner's Argument

In a May 21, 2015, letter filed with her request for an external review, the Petitioner said:

This letter is a request to the State of Michigan to appeal the decision of Total Health Care in denying me a breast reduction I have been requesting since August of 2014.

My initial request was through [REDACTED] the only plastic surgeon available through my health insurance. I visited him in August 2014 and he was in agreement that I needed a breast reduction due to the history of neck and shoulder pain as well as grooves in my shoulders due to my bra. He submitted a report and pictures to Total health Care.

My first denial was September 8, 2014. I appealed this decision on March 6, 2015 and again I was denied and was given the last resort of appealing to the state.

* * *

Since the letter dated March 5, 2015, I have once again been hospitalized for exacerbation of my neck herniation. I was admitted to [REDACTED] Hospital on April 28, 2015 and discharged on April 30th. During this hospitalization I once again received an epidural neck injection. I now have permanent numbness in my finger and will possibly require surgery in the near future. A letter from [REDACTED] [REDACTED] is included in this information which states CLEARLY the need for me to have a breast reduction.

I am out of options at this point. The staff denying my procedure at THC have neither met nor spoken with me. I have requested an in person review with those who make these important decisions and I have not heard back. I waited years for this surgery in hopes that I would have children. We were unable to have children and at that time I began seeking surgery to relieve my daily discomfort and pain.

The Petitioner's plastic surgeon wrote in August 2014:

[The Petitioner] is 47 years old. She is 5 feet 6 inches and weighs 164 pounds. [She] was seen today because she has shoulder pain, back pain, and neck pain due to heavy droopy breast. She reported her bra size to be 36 DD. She also has neck pain and in the past, she has been hospitalized for severe neck pain because of the breast that had been pulling on the shoulder and neck area. She has problem sleeping at night due to the size of the breast.

She has tried multiple bras.

She has rash under the breast fold area.

I examined her today. She has droopy breast. Nipple distance from sternum is 29 cm and no palpable masses were noted. She is due for mammogram this week.

Diagnosis today is heavy droopy breast causing shoulder pain and back pain.

I recommended mastopexy and excision of breast tissue to reduce the size of the breast. Estimated amount of tissue to be removed from each breast is about 200 grams.

. . . We would like to have a prior authorization for this patient for bilateral reduction mammoplasty and mastopexy.

Respondent's Argument

In its final adverse determination, Total Health care stated:

. . . The request for coverage of reduction mammoplasty is again denied. The reason for this decision is:

Your reduction Mammoplasty is not considered medically necessary as the removal of only 200 grams of breast tissue is not likely to relieve you of any of your symptoms.

This decision is based on nationally developed and internally adopted Reduction Mammoplasty criteria. The criteria are based on physician-reviewed journal articles, scientific studies and national standards.

THC's criteria are found in its medical policy on reduction mammoplasty.

Director's Review

THC determined that breast reduction surgery was not medically necessary for the Petitioner because "the removal of only 200 grams of breast tissue is not likely to relieve you of any of your symptoms."

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

The IRO physician reviewer is board certified in plastic surgery, has been in active practice for more than 12 years, and is familiar with the medical management of patients with the member's condition. The IRO report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that the requested breast reduction surgery is medically necessary for treatment of the member's condition.

Rationale:

* * *

The member's symptoms include chronic neck, back and shoulder pain, as well as shoulder grooving and left upper extremity paresthesia, which affect her activities of daily living, including sleep and ambulation. The member's bra size is reported to be a DD. Examination notes report significant macromastia. The member's neurosurgeon stated that her enlarged breasts are contributing to her symptoms and that a breast reduction would help prevent future neck surgery. The planned reduction is approximately 200 grams of tissue from each breast.

The MAXIMUS physician consultant indicated that the member has severe symptomatic macromastia and has failed reasonable conservative management of therapy, injections, pain management and multiple bras. The physician consultant also indicated that the member has well-documented back, neck and shoulder pain, shoulder grooving from her bra straps and upper extremity paresthesias likely related to her significant macromastia. The consultant explained that the member's photographs support that she has significant macromastia. The consultant also explained that the member has traditional signs and symptoms of macromastia that would benefit from a breast reduction. According to one article, "the conclusion that the weight of reduction is independent of outcome can only be made for reductions of more than 205 g per breast, based on the current literature." [Citation omitted] The physician explained that the difference between a 200 gram and 205 gram reduction is negligible. The consultant also explained that the information submitted by the member's neurosurgeon helps to confirm that she has a likely significant deficit directly related to her macromastia. The consultant noted that if an additional mastopexy code is used this should be considered an integral part of the breast reduction and not separately reimbursable.

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.

The Director, discerning no reason why the IRO's recommendation should be rejected, finds that the Petitioner's breast reduction surgery is medically necessary and therefore a covered benefit.

V. ORDER

The Director reverses THC's March 25, 2015, final adverse determination.

THC shall immediately authorize coverage for the Petitioner's breast reduction surgery, and shall, within seven days of providing coverage, furnish the Director with proof it has implemented 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 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 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, Health Care Appeals Section, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin
Director

For the Director:


Randall S. Gregg
Special Deputy Director