

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. 145547-001

UnitedHealthcare Insurance Company,

Respondent.

Issued and entered
this 21st day of January 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On December 29, 2014, ██████████ (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.* After a preliminary review of the material received, the Director accepted the case on January 7, 2015.

The Petitioner receives medical benefits through a group plan that is underwritten by UnitedHealthcare Insurance Company (UHC). The Director immediately notified UHC of the external review request and asked for the information it used to make its final adverse determination. UHC provided its response on January 12, 2015.

The issue in this external review can be decided by a contractual analysis. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the *UnitedHealthcare Choice Plus* certificate of coverage.

Following knee surgery the Petitioner obtained a portable commode chair on June 30, 2014, for home use. The provider's charge for this item was \$316.94.

When UHC denied coverage for the item, the Petitioner appealed through UHC's internal grievance process. At the conclusion of that process, UHC issued a final adverse determination dated

November 12, 2014, affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did UHC correctly deny coverage for the Petitioner's commode chair?

IV. ANALYSIS

Petitioner's Argument

The request for external review form contains this statement:

See attached letter. The insurance company is refusing to pay for the commode stating it is a chair for comfort - it is a toilet - a necessity. See attached pictures & measurements of the room [the Petitioner] was unable to manipulate his walker into. A chair & a commode are two different things. Request that the fee be paid.

In the attached letter the Petitioner said:

[UHC] has said to appeal to you on their decision not to pay for the necessary health care supply. They seem to be misunderstood as to what this "chair" is - it is a portable toilet.

With my left knee replacement I could not get into our bathroom or toilet. We felt we had sufficiently documented with pictures, attached again.

Please reconsider, if this is not the case the next knee I will go to a rehab center for the weeks to month require to get mobile enough to use our bathroom.

Respondent's Argument

In its final adverse determination, UHC explained its denial:

After reviewing the information submitted on behalf of your appeal it was determined the requested services will remain denied as it is a Benefit Plan exclusion. Please see your Benefit Plan information listed below.

Section 2: Exclusions and Limitations

We do not Pay Benefits for Exclusions

We will not pay Benefits for any of the services, treatments, items or supplies described in this section, even if either of the following is true:

- It is recommended or prescribed by a Physician.
- It is the only available treatment for your condition.

The services, treatments, items or supplies listed in this section are not Covered Health Services, except as may be specifically provided for in Section 1: Covered Health Services or through a Rider to the Policy.

K. Personal Care, Comfort or Convenience

5. Supplies, equipment and similar incidental services and supplies for personal comfort. Examples include:

- Chairs, bath chairs, feeding chairs, toddler chairs, chair lifts and recliners.

Director's Review

This case requires the Director to determine if the Petitioner's portable commode is excluded from coverage because it is an item of "personal care, comfort or convenience."¹

The durable medical equipment benefit is described in the certificate (p. 11):

Durable Medical Equipment that meets each of the following criteria:

- Ordered or provided by a Physician for outpatient use primarily in a home setting.
- Used for medical purposes.
- Not consumable or disposable except as needed for the effective use of covered Durable Medical Equipment.
- Not of use to a person in the absence of a disease or disability.

Benefits under this section include Durable Medical Equipment provided to you by a Physician.

Additional information about personal care, comfort or convenience items is found in the certificate in "Section 2: Exclusions and Limitations" (p. 29-30) which says:

We do not Pay Benefits for Exclusions

We will not pay Benefits for any of the services, treatments, items or supplies described in this section, even if either of the following is true:

- It is recommended or prescribed by a Physician.
- It is the only available treatment for your condition.

The services, treatments, items or supplies listed in this section are not Covered Health Services, except as may be specifically provided for in *Section 1: Covered Health Services* or through a Rider to the Policy.

* * *

K. Personal Care, Comfort or Convenience

* * *

¹ UHC has not disputed the necessity of the portable commode nor has it alleged that the commode was not ordered or provided by a physician. Its sole basis for denying coverage was that it is excluded as an item of personal care, comfort or convenience.

5. Supplies, equipment and similar incidental services and supplies for personal comfort. Examples include:
- Air conditioners, air purifiers and filters and dehumidifiers.
 - Batteries and battery chargers.
 - Breast pumps.
 - Car seats.
 - Chairs, bath chairs, feeding chairs, toddler chairs, chair lifts and recliners.
 - Exercise equipment.
 - Home modifications such as elevators, handrails and ramps.
 - Hot tubs.
 - Humidifiers.
 - Jacuzzis.
 - Mattresses.
 - Medical alert systems.
 - Motorized beds.
 - Music devices.
 - Personal computers.
 - Pillows.
 - Power-operated vehicles.
 - Radios.
 - Saunas.
 - Stair lifts and stair glides.
 - Strollers.
 - Safety equipment.
 - Treadmills.
 - Vehicle modifications such as van lifts.
 - Video players.
 - Whirlpools.

UHC's coverage determination guideline entitled "Durable Medical Equipment, Orthotics, Ostomy Supplies, Medical Supplies and Repairs/Replacements"² also says this:

Coverage Limitations and Exclusions

² Number CDG.009.01, effective February 1, 2014.

* * *

3. Additional accessories to DME items or devices which are primarily for the comfort or convenience of the enrollee are not covered. Examples include but not limited to: air conditioners, humidifiers, air purifiers and filters, remodeling or modification to home or vehicle to accommodate DME or patient condition.

In his appeal to UHC, the Petitioner indicated that he is “about 6’ 3½” tall” and weighs 350 pounds. After his knee surgery, which required 47 staples, he was unable to bend his knee; his mobility was limited and he needed to use a walker. As a result, he could not access his bathroom and so he acquired the portable commode.

After a review of the certificate and the coverage determination guideline, the Director concludes that the portable commode is not a covered benefit. While a portable commode is not specifically listed above in the examples of excluded items of personal care, comfort or convenience, that list does show that the Petitioner’s coverage generally excludes accessibility-related equipment and modifications, e.g., “home modifications such as elevators, handrails and ramps,” “stair lifts and stair glides,” and “vehicle modifications such as van lifts.”

Moreover, the certificate of coverage says that items of durable medical equipment must be used for “medical purposes” which is not shown to be the case here. The Director acknowledges that while the portable commode served an important need, it was obtained chiefly for the convenience of the Petitioner, who had difficulty accessing his bathroom, and not for a medical purpose.

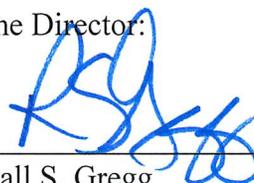
V. ORDER

For the reasons state above, the Director upholds UnitedHealthcare Insurance Company’s November 12, 2014, 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 Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Annette E. Flood
Director

For the Director:



Randall S. Gregg
Special Deputy Director