

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. 151413-001

UnitedHealthcare Insurance Company,

Respondent.

Issued and entered
this 17th day of February 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for substance abuse treatment at a certain level of care by her health insurance carrier, UnitedHealthcare Insurance Company (UHC).¹

On December 21, 2015, ██████████, the Petitioner's authorized representative, filed a request with the Director of Insurance and Financial Services for an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits through a group plan underwritten by UHC. The Director immediately notified UHC of external review request and asked for the information it used to make its adverse determination. The Director received UHC's response on December 28, 2015. After a preliminary review of the materials submitted, the Director accepted the request on December 30, 2015.

The case involves medical issues so the Director assigned it to an independent review organization which provided its analysis and recommendation on February 3, 2016.

¹ The plan's mental health and substance abuse benefits are administered by United Behavioral Health, which conducted the internal grievance and responded for UHC in this review.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in the *UnitedHealthcare Choice Plus Certificate of Coverage* (the certificate).

On June 10, 2014, the Petitioner was admitted to a substance abuse facility where she was treated in a partial hospitalization program through November 27, 2014. UHC covered the Petitioner's care through July 10, 2014, but determined that partial hospitalization was not medically necessary thereafter.

The Petitioner appealed the decision through UHC's internal grievance process. At the conclusion of that process, UHC issued a final adverse determination dated August 27, 2015, affirming its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did UHC correctly deny coverage for the Petitioner's partial hospitalization substance abuse treatment from July 11 through November 27, 2014?

IV. ANALYSIS

Petitioner's Argument

On July 6, 2015, the Petitioner's authorized representative wrote to UHC to explain why the Petitioner needed partial hospitalization through November 27, 2015.

The letter provided information about the Petitioner's history of substance abuse. It explained that the Petitioner was held hostage and raped because of her drug use. It noted that the Petitioner had concussions from horseback riding and that people with concussions need more time in treatment due to the effects of the concussions.

The letter said that the Petitioner has attention deficit hyperactivity disorder and such a comorbid condition prolonged the need for substance use treatment because her ability to learn was impaired. The letter further said:

- the Petitioner had been subject to physical violence;
- she was a danger to herself by living in a drug house;
- she was a danger to others;
- her behavior was so bad that she was thrown out of her family home and therefore the family home was not an option for her recovery;

- she had tried and failed other therapies; and
- a prolonged stay in a structured environment was imperative.

On May 1, 2015, the Petitioner's father wrote to UHC:

We are writing you to request that you rescind your previous decision to deny coverage for our daughter's residential treatment . . . for the dates June 10, 2014 – November 26, 2014. [The facility] was recommended for [the Petitioner] by the professionals on her treatment team . . . in Texas. That recommendation was supported by her primary therapist, for over 10 years. . . . Every member of her extensive treatment team, including her primary care physician . . . believed [she] was merely stabilized [in] Texas and needed to have, intensive, long-term, residential treatment in order to save her life and acquire the skills necessary to live a productive, safe, and healthy adult life.

Without the benefit of this treatment protocol all believed she would quickly dissent [*sic*] back to the unhealthy, violent life she was leading prior to entering treatment because she would not have the skills to manage her complicated diagnosis of Borderline Personality Disorder, Anxiety Disorder, Psycho Social Disorder and addiction. This would certainly lead to her death and cause the entire family extreme pain and suffering. This diagnosis manifested itself in the following ways: dropping out of college, repeated car accidents, a DWI, jail time, physical, sexual and mental abuse by a boyfriend, lying, stealing and severe rage. [Her] connection to the drug culture has endangered our entire family both physically and mentally including cyber bullying of her younger sister, threats to the overall well-being of the family and damage to our property. Every member of our family, including [the Petitioner], was living in fear and was suffering from acute anxiety.

[The facility] has been known for their success in treating the most difficult mentally ill patients who present with co-occurring disorders such as [hers]. The goals of their treatment program are to provide patient with a road map to recovery and a successful life, engage patients in identifying the core issues that are holding them back from a successful life and to create a healthy family system. They believe "the patient is the family and the family is the patient."

Treatment that is normally available at non-specialized outpatient centers would not have been sufficient in treating Petitioner's issues.

In closing, given the clinical analysis provided by [the Petitioner's] counselors indicating her serious and life threatening medical and mental state we respectfully request that you expedite the reversal of your decision to deny coverage for her treatment. . . .

UnitedHealthcare's Argument

In the final adverse determination UHC'S physician representative informed the Petitioner:

. . . After fully investigating the substance of the appeal/grievance, including all aspects of clinical care involved in this treatment episode I have determined that benefit coverage is not available for the following reason(s):

Taking into consideration the available information, including the additional clinical information provided in the Letter of Appeal and Medical Record, and also the locally available clinical services, it is my determination that the requested service did not meet the Optum Level of Care Guideline required to be followed in the member's behavioral health plan benefits.

Based on the Optum Level of Care Guideline for the Substance Use Disorder Partial Hospitalization Level of Care, it is my determination that that no further authorization can be provided from 07/11/2014 and forward.

You were admitted for treatment of a Substance Use Disorder. After reviewing the available information, it is noted you had made progress and that your condition no longer met Guidelines for further coverage of treatment in this setting. You were not in withdrawal or in Post-Acute Withdrawal Syndrome (PAWS). You did not have a medical condition that required 24 hour nursing care. You were not suffering from a serious mental illness that required nursing care. You were not a danger to yourself or others. Your behavior was under good control and you were able to cooperate with your providers. Your family is supportive of recovery. You were not in imminent risk of relapse. You could have continued care in the Substance Use Disorder Outpatient setting.

* * *

This determination does not mean that you did not require additional health care, or that you needed to be discharged. Decisions about continuation of treatment should be made by you and your provider. The purpose of this letter is to inform you that based on my review of the available information, I have determined that benefit coverage is not available for your admission . . . for the following date(s) of service: 07/11/2014 through 11/27/2014.

Director's Review

The certificate (p. 8) covers medically necessary treatment, including partial hospitalization for mental health and substance use treatment (p. 14).

The question of whether the Petitioner required treatment at the partial hospitalization level from July 11 through November 27, 2014 (i.e., was it medically necessary), was 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 IRO's physician reviewer is board certified in psychiatry with experience in addiction medicine; has been in active practice for more than 20 years; and is familiar with the medical management of patients with the Petitioner's condition. The IRO report contained this analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that it was not medically necessary for the member to have been treated at a partial hospitalization program level of care from 7/11/14 to 11/27/14.

Rationale:

* * *

This was the member's fourth substance abuse treatment. According to the information submitted for review, the member's substance abuse history included THC, cocaine, crystal methamphetamine, heroin, crack cocaine, Xanax, morphine, Fentanyl, Hydrocodone and alcohol. The member had previously been treated in Utah at two wilderness programs for about 6 months, but left the second program on her own. The member also went to a . . . program in Houston, Texas and stayed sober for about 18 months. The member was diagnosed with attention deficit hyperactivity disorder in 5th grade and had been on stimulants, which she felt helped her. The records provided for review noted that the member had a history of borderline personality disorder and antisocial personality disorder features.

The MAXIMUS physician consultant explained that based on a review of the records provided for the period at issue in this appeal, the member was less angry, was able to communicate well and was able to express her emotions openly. The member denied any suicidal or self-harm thoughts or intents and was medically stable. The member's appetite was normal according to the psychiatric note. The member attended her groups as scheduled and was reported to participate without difficulty. The physician consultant explained that the member was not showing any dangerousness or difficulty requiring the intensity of a partial hospitalization program level of care. The consultant indicated that the member could have been treated at a lower level of care during the period at issue in this appeal. The physician consultant also indicated that the criteria utilized by the Health Plan are considered a standard of care and the member did not meet these criteria for the period at issue in this appeal.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that it was not medically necessary for the member to have been treated at a partial hospitalization program level of care from 7/11/14 to 11/27/14. [Citations omitted.]

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. The Director can discern no reason why the IRO's recommendation should be rejected in this case.

The Director accepts the IRO's recommendation and finds that partial hospitalization treatment was not medically necessary for the Petitioner from July 11 through November 27, 2014, and is therefore not a covered benefit.

V. ORDER

The Director upholds UnitedHealthcare's final adverse determination of August 27, 2015.

This is a final decision of an administrative agency. 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 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