STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner
v **File No. 122440-001**

Priority Health Insurance Company
Respondent

Issued and entered
this 22nd day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 20, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Petitioner receives health benefits under a policy underwritten by Priority Health Insurance Company (PHIC).

The Commissioner notified PHIC of the external review and requested the information used in making its adverse determination. PHIC furnished the requested information on July 22, 2011. On July 27, 2011, after a preliminary review of the material received, the Commissioner accepted the Petitioner's request for external review.

Because medical issues are involved, the Commissioner assigned the case to an independent review organization, which provided its analysis and recommendations on August 10, 2011. (A copy of the complete report is being provided to the parties with this Order.)

II. FACTUAL BACKGROUND

On October 18, 2011, the Petitioner underwent spinal fusion surgery. After her discharge the Petitioner was required to wear a body brace for three months. She was given a list of items (shower stool, grasper, sock aid, shoe horn, and bathing sponge) that her physician prescribed as needed for self-care.

PHIC denied coverage, ruling that the items were excluded from coverage under the policy. Petitioner appealed the denial through PHIC's internal grievance process. PHIC issued its final adverse determination letter dated June 9, 2011, affirming its original determination.

III. ISSUE

Did PHIC correctly deny coverage of the requested items as durable medical equipment?

IV. ANALYSIS

Petitioner's Argument

In her request for external review, Petitioner argues:

> I am requesting coverage of the hip/knee package and tub stool/bench. I feel these were necessary for the success of my recovery. My physician also submitted certificate of necessity for these items. I am having a difficult time understanding why the raised toilet seat was covered but not these items. The Priority Health Appeal Committee admitted these were necessary for my recovery as well but still denied payment.

The Petitioner also included a copy of a certificate of medical necessity from her physician dated February 25, 2011. She believes PHIC should provide coverage as the items are medically necessary.

Respondent's Argument

In its final adverse determination, PHIC wrote:

> **Decision:**
>
> Uphold denial – requested coverage will not be provided. Priority Health Insurance Company processed the claim for the tub bench and hip/knee equipment kit to deny as not a covered service appropriately in accordance with the Priority Health Insurance Company Insurance Policy and Medical Policy 91110-R12 for Durable Medical Equipment.
>
> Documentation reviewed does evidence the items were prescribed as medically necessary by [the Petitioner's physician], however these items are specifically excluded from coverage by Priority Health Insurance Company.
>
> The appeal committee understands that these items were necessary for [the Petitioner] to take care of herself while recovering from surgery, however, they are simply not covered by her insurance.

Commissioner's Review

The Petitioner's policy, pages 24-25, excludes coverage for several types of durable medical equipment:

- Equipment and devices solely for the convenience of you or your caregiver.
- The purchase or rental of personal comfort items, convenience items, or household equipment that have customary non-medical purposes, such as, among other things: protective beds, chair lifts, air purifiers, water purifiers, exercise equipment, non-allergenic pillows, mattresses or waterbeds, spas, tanning equipment, and other similar equipment.

* * *

- Self-help, communication or adaptive aids, designed for self-assistance or safety. Examples include, among other things, reachers, feeding, dressing and bathroom aids, augmentive communication devices, car seats, and protective beds.

To determine if the shower stool, grasper, sock aid, shoe horn, and bathing sponge should be covered, the case was assigned to an independent review organization (IRO) for analysis as required by section 11(6) of Patient's Right to Independent Review Act. The IRO reviewer is a practicing physician who is board certified in physical medicine and rehabilitation and has been in practice for more than 18 years. The reviewer examined the medical records and arguments presented by the parties, and provides the following analysis and conclusion:

> . . . [The Petitioner] was in a hard shell body cast following spinal fusion surgery and was unable to bend or twist due to restrictions from her treating physician. . . . [The Petitioner] received a shower stool, grasper, sock aid, shoe horn and bathing sponge to assist her with activities of daily living post-operatively. However, . . . the shower stool, grasper, sock aid, shoe horn and bathing sponge were personal, household, comfort, convenience, furnishings, self-help or adaptive aid items, which are excluded from coverage by the Health Plan.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner 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 Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case.

The Commissioner finds that the Petitioner's shower stool, grasper, sock aide, shoe horn, and bathing sponge are items of durable medical equipment which are excluded from coverage under the Petitioner's policy. The denial of coverage was consistent with the terms of the policy.

V. ORDER

The Commissioner upholds Priority Health Insurance Company's final adverse determination issued June 9, 2011. PHIC is not required to cover the Petitioner's requested durable medical equipment.

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 Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

_____

R. Kevin Clinton
Commissioner