

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

In the matter of:

Michigan Brain and Spine Surgery
Petitioner

File No. 22-2144

v

Citizens United Reciprocal Exchange
Respondent

Issued and entered
this 3rd day of January 2023
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On November 7, 2022, Michigan Brain and Spine Surgery (Petitioner) filed with the Department of Insurance and Financial Services (Department) a request for an appeal pursuant to Section 3157(a) of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157(a). The request for an appeal concerns the determination of Citizens United Reciprocal Exchange (Respondent) that the Petitioner overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal is based on the denial of a bill pursuant to R 500.64(3), which allows a provider to appeal to the Department from the denial of a provider's bill. The Respondent issued the Petitioner a bill denial on August 29, 2022.

The Department accepted the request for an appeal on November 9, 2022. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on November 18, 2022 and provided the Respondent with a copy of the Petitioner's submitted documents. The Respondent filed a reply to the Petitioner's appeal on December 7, 2022.

The Department assigned an independent review organization (IRO) to analyze issues requiring medical knowledge or expertise relevant to this appeal. The IRO submitted its report and recommendation

to the Department on December 15, 2022. In response to a request from the Department, the IRO submitted an amended IRO report on December 16, 2022.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for a spinal surgical procedure rendered on May 10, 2022. The Petitioner billed the Respondent using Current Procedural Terminology (CPT) codes: 22830 with a 22 modifier, 22612 with a 59 modifier, 22842, 20930, 20936, 20939, 60347 with a 22 and 59 modifier, 61783, 69990, and 76000. These procedure codes are defined as exploration of spinal fusion; arthrodesis, posterior or posterolateral technique, single interspace, lumbar; posterior segmental instrumentation, 3 to 6 vertebral segments; allograft, morselized, or placement of osteopromotive material, for spine surgery only; autograft for spine surgery only, local (e.g., ribs, spinous process, or lamina fragments) obtained from same incision; bone marrow aspiration for bone grafting, spine surgery only, through separate skin or fascial incision; lumbar laminectomy; stereotactic computer-assisted (navigational) procedure, spinal; microsurgical techniques, requiring use of operating microscope; and fluoroscopy, up to 1 hour physician or other qualified health care professional time, respectively.

With its appeal request, the Petitioner submitted supporting documentation, which included the determination issued by the Respondent, billing claim forms, medical records, and a narrative outlining its reason for the appeal. The Petitioner's submitted documents identified the injured person's diagnoses as spinal instabilities of the lumbar region; spinal stenosis of the lumbar region without neurogenic claudication; and fusion of spine in the lumbar region. The injured person was involved in a motor vehicle accident (MVA) in December 2021.

The Petitioner's request for an appeal stated:

The [injured person] has a history of a lumbar fusion with instrumentation anterior interbody and left posterior instrumentation on August 15, 2018. The [injured person] was asymptomatic and working prior to a MVA December 27, 2021 which resulted in exacerbated low back pain. He was studied with [computed tomography] which showed a possible lucency in the screw of L5. The [injured person] continue[ed] [to have] worsening... symptoms despite conservative treatment. His low back pain continue[ed] worsening and increasing with any movement of flexion extension or rotation of his lower back. For this reason I recommended exploration of fusion and reinforcement of fusion with [right] posterior pedicle screw and posterolateral fusion... The surgery was necessary to treat the instability and failure of the instrumentation caused by the trauma during the MVA.

In its reply, the Respondent stated that an initial review was completed, for the date of service at issue, and the charges were denied pending receipt of additional documentation. The Respondent further stated that, upon reviewing the Petitioner's submitted documents in this appeal, a second review was

completed, and the Respondent determined that medical necessity was not supported. Specifically, the Respondent noted:

Re-exploration of the fusion and redo of the fusion at L4 5 is not medically necessary to treat this [injured person]. X-rays, [magnetic resonance imaging] and surgical findings do not support any instability at the fusion area that would cause pain. The [computed tomography] scan report is not presented. There is no documentation of conservative treatment.

III. ANALYSIS

Director's Review

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code. This appeal involves a dispute regarding inappropriate treatment and overutilization.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, medical necessity was supported on the date of service at issue and the treatment was not overutilized in frequency or duration based on medically accepted standards.

The IRO reviewer is a physician who is board-certified in neurological surgery with 30 years of experience. The IRO reviewer is an expert in the treatment of the injured person's condition and has recent experience in treating patients with the same or similar condition. In its report, the IRO reviewer referenced R 500.61(i), which defines "medically accepted standards" as the most appropriate practice guidelines for the treatment provided. These may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, boards, and associations. The IRO reviewer relied on the American Association of Neurological Surgeons (AANS), and medical literature for its recommendation.

The IRO reviewer noted that the AANS guidelines and the peer-reviewed medical literature address the use of radiographic assessment of fusion status. The IRO reviewer stated:

These guidelines address the use of computed tomography (CT) scans recommendation, which are most sensitive to assess fusions after instrumented posterolateral and anterior lumbar interbody fusions as in [the injured persons] clinical circumstance. Based on the AANS guidelines, it is generally accepted by spine practitioners to offer added stability by reinforcing and performing a new fusion in a patient with the same clinical picture.

The IRO reviewer further noted:

The procedure was not overutilized and was medically necessary since [the injured person] suffered from clinical lumbar instability manifesting with worsening [low back pain] exacerbated by any movement of the lumbar spine after a motor vehicle accident... The computerized tomography... scan conducted after the December 27, 2021 MVA indicated there was possible lucency in the screw of L5. [The injured person] worsening [low back pain] which increased with flexion extension or rotation of his lower back, despite conservative treatment, supported the decision to move forward with reinforcing and performing a new fusion... Pedicle screw fixation is frequently associated with pedicle screw loosening. In [the injured person's] clinical situation, with a previous lumbar fusion in 2018 and a subsequent MVA in 2021, pedicle screw loosening, particularly with the level fused, is a high likelihood. Reconstructing the stability of the lumbar vertebra is within the standards of care and an appropriate procedure to stabilize [the injured persons] previous lumbar fusion and remedy his current medical issues related to his increased [low back pain] [The injured person] underwent a successful lumbar fusion in 2018 and since then was able to work full time. It is clinically reasonable to conclude [the injured persons] significant and worsening [low back pain] following the... MVA was due to micro instability at the fused level. The exploration of fusion and reinforcement of fusion with right posterior pedicle screw and posterolateral fusion to treat the instability and failure of the instrumentation caused by the trauma from the MVA... was justified and in accordance with the standard of care.

The IRO reviewer recommended that the Director reverse the Respondent's determination that the surgical procedure provided to the injured person, on the date of service at issue, was not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director reverses the Respondent's determination dated August 29, 2022.

The Petitioner is entitled to reimbursement in the amount payable under MCL 500.3157 for the treatment on the dates of service discussed herein, and to interest on any overdue payments as set forth in Section 3142 of the Code, MCL 500.3142. R 500.65(6). The Respondent shall, within 21 days of this order, submit proof that it has complied with this order.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review

should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director
For the Director:

X *Sarah Wohlford*

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford