

**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. 151297-001**

**Aetna Health and Life Insurance Company**  
**Respondent**

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**Issued and entered**  
this 14<sup>th</sup> day of January 2016  
by **Randall S. Gregg**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On December 14, 2015, ██████████, authorized representative of ██████████ (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.*

The request for review involves a denial of coverage issued by the Petitioner's health insurer, Aetna Health and Life Insurance Company (Aetna). The Petitioner's Aetna benefits are provided through a group health plan whose terms are in Aetna's *Open Choice (PPO Medical Plan)* certificate of coverage. The Director notified Aetna of the external review request and asked for the information used to make its final adverse determination. Aetna provided its response on December 16, 2015.

The Director accepted the request for review on December 21, 2015. To address the medical issue in the case, the Director assigned the matter to an independent medical review organization, which provided its analysis and recommendation on January 4, 2016.

**II. FACTUAL BACKGROUND**

The Petitioner has a history of major depressive disorder. After trying and failing numerous medications and other treatments, Petitioner's psychiatrist recommended treatment with transcranial magnetic stimulation (TMS) therapy. The Petitioner requested that Aetna approve coverage for the therapy. Aetna denied the request ruling that TMS therapy is experimental and investigational.

The Petitioner appealed the denial through Aetna's internal grievance process. At the conclusion of that process, Aetna maintained its denial in a final adverse determination issued November 20, 2015. The Petitioner now seeks the Director's review of that final adverse determination.

### III. ISSUE

Is TMS therapy experimental or investigational in the treatment of the Petitioner's condition?

### IV. ANALYSIS

#### Respondent's Argument

In its final adverse determination, Aetna wrote:

Based upon our review of the information provided, including clinical records, correspondence and scientific articles, we are upholding the original benefit determination for Transcranial Magnetic Stimulation. According to Aetna's Clinical Policy Bulletin (CPB) #469, *Transcranial Magnetic Stimulation and Cranial Electrical Stimulation*, Aetna considers transcranial magnetic stimulation experimental and investigational because its value and effectiveness has not been established. It is not covered for any indication, including the following (not an all-inclusive list): Alzheimer's disease, anxiety disorders, auditory verbal hallucinations, autism, bulimia nervosa, chronic pain, depression, dystonia, mood disorders, neuropathic pain, obsessive-compulsive disorder, panic disorder, Parkinson disease, schizophrenia, Tourette syndrome, traumatic brain injury. This decision was made utilizing Aetna's CPB#469.

#### Petitioner's Argument

In a December 10, 2015 letter, the Petitioner's psychiatrist explained the need for the TMS therapy:

I am writing on behalf of my patient...to request prior approval for Transcranial Magnetic Stimulation Therapy...for the treatment of her Major Depressive Disorder. Having considered all treatment options for this patient's Major Depressive Disorder this is the best treatment option and is medically necessary. Additionally, I request coverage and benefits be provided for NeuroStar Transcranial Magnetic Stimulation.

[Petitioner] is a [REDACTED] year old female with a diagnosis of Major Depressive Disorder. [Petitioner] has been suffering from this diagnosis for over 20 years and has experienced symptoms affecting her wellbeing and quality of life. She experiences lack of motivation for simple daily living activities (showering, getting dressed). No motivation for daily routines such as cleaning, grocery

shopping or gardening. Her ability to think things thru is not clear. Patient has had multiple hospitalizations most recent for suicidal ideations October 2015.

Rounds of medication trials have been tried and failed both SSRI's and SNRI's. All medications listed were previously tried and failed prior to care at our office March, 16, 2015. Celexa – not helpful, Prozac – ineffective, Wellbutrin – last took 2014 help a little, Lexapro – last took 2014, Elavil – ineffective Brintellix – increased suicidal thoughts. At this time patient is taking Abilify...Fetzima... [and] Wellbutrin XL.

In addition to [her] medication treatment she has also undergone electroconvulsive therapy (ECT) twice in the past 10 years. Her last experience just ending March 2015 after only 6 visits due to the therapy making her very sick, she had to stop. There was not a positive result.

### Director's Review

The Aetna *Open Choice* certificate (page 44) excludes coverage for experimental or investigational drugs, devices, treatments or procedures. (An exception to this exclusion, described on page 31, is not relevant to this review.) The question of whether TMS therapy is experimental or investigational in the treatment of the Petitioner's condition was presented to an independent review organization (IRO) as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO reviewer is a physician in active practice who is board certified in psychiatry and is familiar with the medical management of patients with the member's condition. The IRO reviewer's report included the following analysis and recommendation:

The member has had difficulty with quality of life and well-being with lack of motivation. The member has had multiple hospitalizations for suicidal ideation. The member had been tried on citalopram, fluoxetine, bupropion, escitalopram, Brintellix, BuSpar and Elavil. The member had increased suicidal thoughts and was tried on Abilify, Fetzima and Wellbutrin XL. The member has also undergone electroconvulsive therapy twice in the last 10 years.

The Health Plan denied coverage for transcranial magnetic stimulation on the basis that this procedure is experimental and investigational. Transcranial magnetic stimulation was approved by the Food and Drug Administration in 2008 for treatment resistant depression where the patient has failed conventional psychotropic medications....[T]he medical literature demonstrates that transcranial magnetic stimulation is safe and effective for treatment of major depressive disorder....[T]ranscranial magnetic stimulation is medically necessary for treatment of the member's condition of major depressive disorder, single episode, moderate.

Pursuant to the information set forth above and available documentation,... transcranial magnetic stimulation therapy is not experimental/investigational for treatment of the member's condition. [Medical journal references 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. In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO's recommendation should be rejected in this case, finds that TMS therapy is not experimental or investigational in the treatment of the Petitioner's condition and is, therefore, a covered benefit.

#### V. ORDER

The Director reverses Aetna's November 20, 2015 adverse determination. Aetna shall immediately provide coverage for the Petitioner's TMS therapy. MCL 550.1911(17). Aetna shall, within 7 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 the implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, at this toll free 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 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.

Patrick M. McPharlin  
Director

For the Director:



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Randall S. Gregg  
Special Deputy Director