STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

In the matter of:

[redacted],

Petitioner,

v

File No. 151877-001

Federated Mutual Insurance Company,

Respondent.

Issued and entered
this 8th day of March 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

[redacted] (Petitioner) was denied coverage for an oxygen concentrator by his health insurer, Federated Mutual Insurance Company (Federated).

On February 4, 2016, the Petitioner 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 Federated. The Director immediately notified Federated of the external review request and asked for the information it used to make its final adverse determination. Federated responded on February 5, 2016. After a preliminary review of the material submitted, the Director accepted the request on February 11, 2016.

To address the medical issue in the case, the Director assigned it to an independent medical review organization, which provided its analysis and recommendation on February 25, 2016.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in Federated's *Group Health Insurance Certificate of Coverage* (the certificate).

The Petitioner has multiple medical problems including morbid obesity and obstructive sleep apnea. Unable to use a nasal continuous positive airway pressure (CPAP) device, he has instead been

using an oxygen concentrator while sleeping. Federated denied coverage for the oxygen concentrator, saying it is not medically necessary and is therefore not a covered benefit under the terms of the certificate.

The Petitioner appealed the denial through Federated's internal grievance process. At the conclusion of that process, Federated affirmed its decision in a final adverse determination dated January 4, 2016. The Petitioner now seeks a review of that final adverse determination from the Director.

III. Issue

Did Federated correctly deny coverage for the oxygen concentrator?

IV. Analysis

Petitioner's Argument

In an undated letter to Federated included with the request for external review, the Petitioner wrote:

> According to knowledge I have been told that my insurance is no longer going to cover my oxygen that I use at night. The use of oxygen is very important for my well-being and health. I have an extremely painful neck injury which causes me to have to sleep on my stomach to help remove the pressure in my neck, shoulder, and upper back. In which I cannot use my sleep machine for it doesn't fit / stay on my face while I am sleeping. That's when the oxygen is a major help. It stays on while I sleep, I actually get sleep now, and I've noticed some great positive changes to my memory. I hope with this being said and stated, you may reconsider your [decision].

In a letter dated November 3, 2015, Petitioner's nurse practitioner explained:

> I ordered oxygen for home use for [the Petitioner] on 8/27/15 in response to his low oxygen concentration following his bariatric surgery. He was ordered per nasal cannula at 2L/min and has been using the oxygen daily, mostly at night since then. He is actually sleeping better and feels more rested and his oxygen concentration has improved.
>
> Please reconsider covering this order for oxygen, I am pleased with his progress.

Federated's Argument

In its final adverse determination to the Petitioner, Federated's explained that it denied the oxygen concentrator based on an independent medical review provide by MCMC. Federated noted that the reviewer, an M.D. certified in internal medicine, wrote:

As part of the second level appeal process, we sent the medical documentation provided to MCMC, an independent review organization, for a peer review. This review is outlined as follows:

* * *

RECOMMENDATION:

The rental of an oxygen concentrator as ordered for a lifetime for this patient's medical condition is not considered medically necessary and standard of care.

RATIONALE:

This is a [redacted]-year old man with obesity, obstructive sleep apnea, and anemia and hypoxia perioperatively. According to the provided documentation, the patient had hypoxia in April of 2015 perioperatively and was noted to be hypoxic at rest at an office visit. He was then treated with oxygen and on his office visit in August his saturation was noted to be 96%. Although his Hb perioperatively (when he had the hypoxia) was 8.0, his Hb in August was noted to be 11.7 with a normal echocardiogram. It appears that his hypoxia is related to his anemia and his obstructive sleep apnea for which he is noncompliant with his CPAP. As the patient's hypoxia was in part due to his anemia that has mostly resolved, the rental of an oxygen concentrator as ordered for a lifetime for this patient's medical condition is not considered medically necessary and standard of care.

* * *

Based on the review, the determination has been made to provide coverage from the oxygen billed to use form 04/27/15-07/27/15 for the claims indicated above. However, continued home oxygen beyond these months would not be medically necessary. The claims will be adjusted and you will received corrected Explanations of Benefits under separate cover.

Director's Review

The certificate (section VII, p. 1) excludes coverage for services that are not medically necessary. The terms "medically necessary" and "medical necessity" are defined in the certificate (section VIII, p. 9) as

. . . a treatment service or supply that we determine to be:

a. Necessary for the diagnosis or the direct care and treatment of the illness or injury; and

b. In accordance with generally accepted medical practice and management currently used in the United States; and

c. The most appropriate level of medical care that is needed to provide safe, adequate and appropriate diagnoses or medical treatment; and

d. Not for convenience purposes; and

e. Not experimental or investigational; and

f. Not for maintenance care.

The fact that a physician prescribes, orders, recommends or approves the care, the level of care or the length of time care is to be received, does not make the treatment services or supplies medically necessary.

The question of whether an oxygen concentrator is medically necessary to treat the Petitioner's condition 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 physician reviewer is certified by the American Board of Internal Medicine with a subspecialty in pulmonary disease; is familiar with the medical management of patients with the Petitioner's condition; and is in active practice. The IRO report included the following analysis and recommendation:

Clinical Rationale for the Decision:

The standard of care for treatment of OSA [*obstructive sleep apnea*] is nasal CPAP. Oxygen is only added when there is documented desaturation that does not improve with the use of CPAP alone. Oxygen alone may actually worsen the severity of OSA and its use has never been proven to otherwise improve a patient's overall well-being. There is no evidence in the limited documentation submitted for review that this patient has recent oxygen desaturation at rest, exercise, or sleep.

MCG criteria states home oxygen is indicated for one or more of the following:

- Cancer (advanced)
- Chronic obstructive pulmonary disease
- Cluster headache and patient receiving preventive headache therapy (eg, verapamil)
- Congenital heart disease
- Cystic fibrosis
- Interstitial lung disease
- Neuromuscular or skeletal disorder (e. g. severe kyphoscoliosis, thoracic dystrophy, amyotrophic lateral sclerosis)
- Obesity hypoventilation syndrome
- Pediatric pulmonary disease
- Pulmonary hypertension

> The enrollee does not meet MCG criteria for home oxygen. A home oxygen concentrator is not medically necessary or indicated for the treatment of OSA without the use of nasal CPAP. The CPAP is the actual definitive treatment of this patient's condition.
>
> **Recommendation:**
>
> It is the recommendation of this reviewer that the denial issued by Federated Mutual Insurance Company for Oxygen concentrator be upheld. [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 IRO's recommendation is afforded deference by the Director; the IRO's analysis is based on extensive experience, expertise, and professional judgment. Furthermore, the IRO's recommendation is not contrary to any provision of the Petitioner's coverage. MCL 550.1911(15).

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 Director, discerning no reason why the IRO recommendation should be rejected in this case, finds that an oxygen concentrator is not medically necessary to treat the Petitioner and therefore is not a benefit under the terms of the certificate.

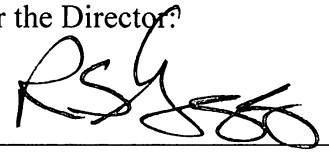
V. ORDER

The Director upholds Federated's January 4, 2016, 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 Michigan 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:



Randall S. Gregg
Special Deputy Director