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. 121666-001**

Priority Health
Respondent
_____/

Issued and entered
this 12th day of July 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 1, 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.* On June 8, 2011, after a preliminary review of the material submitted, the request was accepted.

The Commissioner immediately notified Priority Health of the external review and requested the information used in making its adverse determination. The Office of Financial and Insurance Regulation received Priority Health's complete response on June 20, 2011.

The case involves medical issues so the matter was assigned to an independent review organization which provided its recommendation to the Commissioner on June 24, 2011.[1]

1 The recommendation was initially submitted on June 23, 2011, but it contained a minor error. The independent review organization submitted a corrected version on June 24, 2011.

II. FACTUAL BACKGROUND

The Petitioner is a member of Priority Health, a health maintenance organization (HMO). Her group health care benefits are defined in Priority Health's HMO Certificate of Coverage (the certificate).

The Petitioner has reported a history of congenital tetraplegia[2] with neurogenic bowel and neurogenic bladder. She also has a suprapubic catheter and has had severe anal fissures and has experienced autonomic dysreflexia. She lacks sufficient hand dexterity to self-catheterize or perform digital bowel stimulation.

On August 30, 2010, Priority Health received a request for home health services on a daily basis and skilled nursing visits every other day from September 1, 2010, to an unspecified future date. Priority Health denied coverage for all home health aide services but authorized Petitioner to receive skilled nursing visits once per week.

The Petitioner appealed Priority Health's decision through its internal grievance process. At the conclusion of that process, Priority Health did not change its decision and issued its final adverse determination dated March 30, 2011.

II. ISSUE

Did Priority Health properly deny coverage for daily home health care services and limit the skilled nursing visits to one per week?

IV. ANALYSIS

Petitioner's Argument

The Petitioner and her physicians believe it is necessary for her to receive daily home health services and skilled nursing care every other day. The Petitioner wants Priority Health to make an exception to the plan limitations and cover the daily home health services and skilled nursing visits every other day from September 1, 2010, and thereafter.

2 i.e., quadriplegia, a cervical condition that results in four limb paralysis.

Respondent's Argument

In its March 30, 2011, final adverse determination, Priority Health denied coverage for the home health aide services and limited skilled nursing visits based on the following:

> Uphold denial – requested coverage will not be provided as home health aide services are not a covered benefit in accordance with the Certificate of Coverage and Priority Health Medical Policy 91023-R6 for Home Care.
>
> Note: [The Petitioner] is currently authorized for one skilled nursing visit per week for services related to her wound care and catheter. . . .

Section 6 of the certificate, "Covered and Non-Covered Services," defines the limits of home health care (pp. 21-22):

> **C. Hospitals, Labs, And Other Facilities Services**
>
> * * *
>
> **Home Health Care.**
>
> * * *
>
> *Non-Covered Services*
>
> (a) Custodial care. Any care you receive if, in our opinion, you have reached the maximum level of mental and/or physical function and you will not improve significantly more. Custodial and maintenance care includes room and board, therapies, nursing care, home health aides and personal care designed to help you in the activities of daily living and home care and adult day care that you receive, or could receive, from a member of your family. Custodial care is not Covered, even if you receive home health care services or Skilled Services along with custodial care.

Priority Health also based its determination on the following provisions of its Medical Policy No. 91023-R6, "Home Care," which states:

> **II. POLICY/CRITERIA**
>
> A. Covered Services
>
> 1. Home Health Care – Intermittent skilled services, including hospice services (see *Hospice* policy), approved in advance by us and furnished in the home by a home health care agency or by a registered nurse, licensed practical nurse, physical therapist, occupational therapist, respiratory therapist or speech therapist. Custodial care is not covered, even if you receive home health care services along with custodial care. (Additional coverage limitations and indications below in C1 and C2).
>
> * * *

B. Exclusions

1. Custodial and Maintenance Care – any care you receive (if, in our opinion) when you have reached the maximum level of mental and/or physical function and you will not improve significantly more. Custodial and maintenance care includes room and board, therapies, nursing care, home health aides and personal care designed to help you in the activities of daily living and home care and adult day care that you receive, or could receive, from members of your family. Services provided to Members who are not home hound unless those services are determined by Priority Health to be more cost effective or more practical when provided in a home setting.

* * *

6. Homemaker or home health aide services.
7. Home care for chronic conditions requiring long periods of care or observation which can be safely provided in the member's home by a person without medical training.

* * *

C. Limits/Indications

1. The following conditions apply to all home care patients:

* * *

d. A service is not considered a skilled nursing service merely because it was performed by or under the direct supervision of a nurse. Where a service can be safely and effectively performed (or self administered) by the average nonmedical person, without the direct supervision of a nurse, the service cannot be regarded as a skilled nursing service.

e. Home Health Aides – Home health aides are not a covered benefit to provide custodial care services. They are to be utilized for short-term care on an intermittent basis, provided that the condition is not long-term or chronic, if the home health aide service can predictably avoid over utilization of services at a higher level of care, such as inpatient admission or repeated emergency department visits.

* * *

Definitions:

Custodial and maintenance care – is defined as care received by a member when, in our opinion, the member has reached the maximum level of mental and/or physical function and will not improve significantly more. The purpose of custodial care is to assist an individual in the activities of daily living such as assistance in walking, getting in/out of bed, bathing, dressing feeding, toileting, preparation of special diets, supervision of medication that can be self or family or caregiver administered. Custodial and maintenance care includes room and board, therapies, nursing care, home health aides and personal care designed to help the member in the activities of daily living, and home care and adult day care provided, or that could be provided, by members of the family.

Priority Health states that custodial and maintenance care and the use of home health aides for chronic conditions are excluded from coverage. Priority Health also states that skilled nursing care will be provided based on the Petitioner's current medical condition; its medical team will coordinate with the home health nursing staff to ensure that she is receiving skilled visits at an appropriate frequency to meet her needs.

Commissioner's Review

The certificate excludes coverage for home health care services for conditions that are chronic or long-term and for services that are deemed to be custodial in nature. The certificate's schedule of benefits indicates that skilled nursing is covered at 100% up to a maximum of 45 days per calendar year.

The questions of whether the home health care the Petitioner requested is custodial in nature and whether she requires skilled nursing care every other day was presented to an independent review organization (IRO) for review as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The assigned IRO reviewer is certified by the American Board of Physical Medicine and Rehabilitation, is certified by the American Board of Independent Medical Examiners, and is in active practice. The IRO reviewer explained:

> The requested care is custodial in nature with the exception of the wound care, catheter care and monthly suprapubic catheter changes, which must be performed by a skilled nurse or physician.
>
> The tasks that are being requested to be covered by home health aides and skilled nursing services, except for the suprapubic catheter changes, are "Custodial Care" as defined by the . . . Certificate of Coverage. Custodial and maintenance care includes nursing care and home health aide services designed to assist the [Petitioner] in the activities of daily living and is not a covered service.
>
> The [Petitioner] has chronic conditions affecting her limb function, bladder and bowel function, and skin integrity. She has reached a maximal level of physical function and is not expected to improve. Therefore, any home health aide services or nursing care is considered "Custodial and Maintenance Care" and excluded from coverage. These are tasks designed to help the [Petitioner] in her activities of daily living and self-care, which could otherwise be performed by nonmedical caregivers such as members

> of [the Petitioner's] family after training, and under the direction and supervision of the [Petitioner] herself. This includes the elbow dressing changes, suprapubic gauze dressing changes, suprapubic catheter irrigation, urinary bag changes, and bowel program.
>
> The suprapubic catheter changes require at least a skilled nursing visit, if not outpatient medical care. . . .
>
> There are no national guidelines, society guidelines that directly address the issues at hand, except for the suprapubic catheter changes. The "Consortium for Spinal Cord Medicine" clinical practice guidelines mention the integral role of patients and caregivers in routine neurogenic bowel and bladder management in the community, but do not stipulate that such care must be provided by skilled professionals.
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> * * *
>
> **Recommendation**
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> It is the recommendation of this reviewer that the denial issued by Priority Health for daily home health aide services, as well as skilled nursing visits every other day from September 1, 2010 forward, be upheld. The approved coverage for one skilled nursing visit per week for skilled nursing services related to wound and catheter care is medically necessary.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the recommendation from an IRO 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 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 Priority Health's decision to deny coverage for daily home health aide services and limit skilled nursing care to one visit per week is consistent with the terms of the certificate. The Commissioner also notes Priority Health's willingness to provide coverage for skilled nursing visits based on the Petitioner's medical needs.

V. ORDER

The Commissioner upholds Priority Health's March 30, 2011, final adverse determination. Priority Health is not required to provide coverage for daily home health aide services or skilled nursing visits every other day.

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.

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R. Kevin Clinton
Commissioner