

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 106108-001

v

US Health and Life Insurance Company
Respondent

Issued and entered
this 12th day of August 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On July 10, 2009, 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.* After a preliminary review of the material submitted the Commissioner accepted the request on July 17, 2009.

The Commissioner notified US Health and Life Insurance Company (USHL) of the external review and requested the information used in making its adverse determination. USHL provided information on July 15, 2009.

The issue in this external review can be decided by a contractual analysis. The contract is the certificate of group dental insurance coverage (the certificate) issued by USHL that defines the Petitioner's dental care benefits. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require an opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner received endodontic services (evaluation and molar root canal) believing that most of the cost would be covered by his dental insurance. He subsequently learned that he had exhausted his dental coverage for the year and was left with unexpected out-of-pocket expense.

The Petitioner appealed USHL's processing of his dental claim. After the Petitioner exhausted the internal grievance process USHL maintained its decision and sent the Petitioner a final adverse determination dated May 4, 2009.

III ISSUE

Did USHL properly process the Petitioner's dental claim?

IV ANALYSIS

Petitioner's Argument

The Petitioner knew that he had an annual maximum dental care benefit when he went to the endodontist on November 20, 2008. He says the endodontist's office called USHL to confirm the balance of the benefit and was told that over \$800.00 remained of the \$1,250.00 maximum for 2008. The endodontist's charge for an evaluation and root canal was \$1,085.00 (before any network discount) and the Petitioner was asked to pay his 20% coinsurance, estimated to be \$204.00, before receiving services. The Petitioner says he proceeded with the endodontic care believing that it would be largely covered by USHL.¹

The Petitioner subsequently learned that he had only \$349.20 of dental care benefits left at the time of the endodontic services. As a consequence, he was responsible for \$615.80 in out-of-pocket expense instead of his original \$204.00 copayment, an additional \$411.80.

The Petitioner says he would not have had the services on November 20, 2008, if he

¹ USHL covers Class II dental services at 80% of the eligible expense.

had known the correct balance of his dental benefit for 2008. He argues that USHL should be responsible for the amount over his 20% copayment because it misinformed him.

Respondent's Argument

In its final adverse determination letter, USHL told the Petitioner:

According to the dental schedule of benefits, there is a \$1,250.00 calendar year maximum. * * * The dental maximum has been exhausted and the payment of the claim was paid appropriately according to the schedule of benefits.

USHL says it does not record benefit inquiry calls but does not believe that it gave out incorrect information. It cannot explain the discrepancy between the Petitioner's actual balance and the balance the Petitioner says the endodontist's office was given. "[T]he customer service representatives follow certain procedures and look at certain computer screens to verify they are speaking with/about the correct individual and once assured of that, the claim/benefit information is electronically available for that person." USHL says that it did not contact the endodontist's office to verify the call.

USHL also says that the Petitioner was provided with explanation of benefits forms for five earlier dental claims and that those forms showed the amounts paid by USHL throughout the year and could be used to calculate the remaining benefit.

In a July 15, 2009, letter to the Office of Financial and Insurance Regulation, USHL conceded:

At this point it is clear that there was an error at one end of the conversation or the other. While USHL is not willing to agree that the error was the responsibility of its customer service representative, USHL understands [the Petitioner's] concern that he is being billed for additional amounts which, while correct under the terms of the insurance coverage, are more than he thought he would have to pay.

* * *

In the interests of resolving this matter, [we] have asked the Claim Department to prepare an *ex gratia* check payable to [the Petitioner] for \$250.00 or more than 60% of the \$411.80 he is being billed by the dentist's office. [We are] sending [the Petitioner] this offer by way of a copy of this letter.

Commissioner's Analysis

It is unfortunate that the Petitioner received incorrect information about the remaining balance of his annual maximum dental benefit and perhaps relied on that information to his detriment. However, under the Patient's Right to Independent Review Act (PRIRA), the Commissioner is not able to resolve disputes such as what was said in a telephone call. The PRIRA process lacks the hearing procedures necessary to make findings of fact based on oral statements.

Moreover, even if the Commissioner were able to decide that the fault in this case lay with USHL, he does not have the power under PRIRA to order relief based on doctrines such as reliance or estoppel. Such powers do exist in the circuit court to which PRIRA decisions may be appealed. The Petitioner must decide if he is willing to accept USHL's offer of an additional \$250.00 to resolve this case or appeal this Order to circuit court.

Under PRIRA, the Commissioner's role here is to determine if the Petitioner's claims for dental services were processed according to the terms and condition of the certificate and state law. The Commissioner concludes and finds that they were.

**V
ORDER**

The Commissioner upholds USHL's May 4, 2009, 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 sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court

File No. 106108-001

Page 5

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.