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. 102666-001**

v
US Health and Life Insurance Company
Respondent
_____/

Issued and entered
this 26th day of June 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On January 26, 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. 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 its information on January 29, 2009. The Commissioner accepted Petitioner's appeal on February 6, 2009.

This case presented medical questions which required review by a medical professional. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its report on March 13, 2009.

II
FACTUAL BACKGROUND

The Petitioner receives health care benefits under a certificate of group insurance (the certificate) issued by USHL that defines the Petitioner's health care benefits. On April 26 and September 14, 2008, the Petitioner had breathing difficulty and, on the advice of her physician,

went to a hospital emergency room where she was treated and released. For her September 14 emergency room services, she was taken to the emergency room by ambulance.

USHL provided coverage at the in-network level for laboratory services, paying 100% of eligible expenses. The remainder of the hospital services were covered at 60% of eligible expenses. The ambulance services were paid at the out-of network level of 60% of eligible expenses.

The Petitioner appealed USHL's handling of her emergency room and ambulance claims. After exhausting USHL's internal grievance process the Petitioner received a final adverse determination dated January 29, 2009.

III
ISSUE

Did USHL correctly provide coverage for the Petitioner's emergency room and ambulance services provided on April 26 and September 14, 2008?

IV
ANALYSIS

Petitioner's Argument

On April 26, 2008, the Petitioner contacted her physician Dr. XXXXX by phone and described her symptoms. ("I was having difficulty breathing, severe anxiety, increased heart rate, elevated blood pressure as well as emotional difficulty. I was unable to make a decision or concentrate on any activity.") Dr. XXXXX recommended she go to the emergency room for evaluation since her office was not open. At the emergency room she was diagnosed as having an anxiety attack. She was given medication that relieved her symptoms and was released.

On September 14, 2008, she went to an urgent care center near her home. She was hyperventilating, had elevated blood pressure and heart rate; and was not able to do anything to help her condition. Upon evaluation, the urgent care physician determined she needed to go to the emergency room. She was transported by ambulance to XXXXX.

Petitioner does not feel that she should be liable for medical bills related to these

episodes. Petitioner says she was following the advice of two different medical professionals who determined treatment in the emergency room was medically necessary. She wants all services paid at 100% of eligible expenses because they were related to a medical emergency.

Respondent's Argument

In its January 29, 2009, final adverse determination letter, USHL said:

> According to the schedule of benefits emergency medical care is payable at 100 percent of the PPO allowable and is only for other than mental health care, alcoholism and substance abuse. The primary diagnosis that was submitted for both dates of services were related to a mental health condition and according [to] the schedule of benefits are payable at 60 percent of the PPO allowable.

USHL believes it has processed the claims according to the schedule of benefits. USHL notes that for April 26, 2008, Petitioner's diagnoses were dysthymic disorder, depression with anxiety, depressive reaction, and personal history of other mental health disorder. The diagnoses for September 14, 2008, included panic disorder without agoraphobia, personal history of other mental disorder and shortness of breath. USHL says these services are related to a mental health condition and all claims are payable at the in-network level with the exception of the ambulance claim from the XXXXX.

Regarding the ambulance services, USHL explained its coverage decision in a March 30, 2009 letter to Office of Financial and Insurance Regulation staff:

> The XXXXX maintains an ambulance service and that ambulance provider is not in the network. Because the ambulance claim was from an out-of-network provider it was reduced by the amount over UCR [Apparently, an acronym for "usual, customary and reasonable" charge.] before the coinsurance percentage was applied. After the UCR was determined, the coinsurance payable by the member for out-of-network providers for expenses related to mental health care is 40% (plan pays 60%). If the ambulance service had not been related to mental health care the out-of-network benefit would have been 80% (member coinsurance of 20%).

Commissioner's Review

The first question to be resolved in this case is which of two coverage provisions should

apply to Petitioner's hospital care – the emergency care provision or the mental health coverage provision. Because the nature of Petitioner's care is a medical question, the Commissioner requested an analysis and recommendation from an independent review organization (IRO). The reviewer was a physician, board-certified in psychiatry, who has been in practice for more than 20 years. The reviewer examined the materials submitted by Petitioner and USHL and reached the following conclusions:

> [Petitioner] suffered somatic signs and symptoms caused by her anxiety and panic disorders, including difficulty breathing, at the time of these emergency room visits. . . . [T]hese emergency room visits on 4/26/08 and 9/14/08 were due to these somatic signs and symptoms related to her mental health diagnoses. . . . [W]hile these services were emergent in nature, they were for treatment of somatic issues related to mental health conditions. . . . [T]hese emergency room services were not for treatment of the signs and symptoms of a physical illness.

According to the reviewer, the emergency room services rendered on April 26, 2009, and September 14, 2008, were mental health services.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the Commissioner gives deference to the IRO determination since it is based on extensive expertise and professional judgment. The Commissioner, discerning no reason to reject the recommendation in this case, accepts the IRO reviewer's determination and finds that the emergency room services received on April 26, 2009, and September 14, 2008, were for a mental health condition. Therefore, USHL paid the emergency room claims appropriately.

The emergency care provision in the schedule of benefits includes coverage for ambulance services. However, this provision excludes coverage for mental health care. USHL, therefore, processed the ambulance charges under the mental health benefit schedule which requires USHL to provide 60% coverage.

The Commissioner finds that USHL processed the Petitioner's claims for the emergency room and ambulance services consistent with the terms of the policy.

V
ORDER

The Commissioner upholds USHL's January 29, 2009, final adverse determination in this case.

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 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.