

September 10, 2012

BY FEDERAL EXPRESS

REDACTED

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**SETTLEMENT COMMUNICATION: SUBJECT TO FEDERAL RULE OF
EVIDENCE 408 AND CPLR 4547**

Ida Hammer - Denial of Benefits

Dear **REDACTED** :

This firm, along with the Transgender Legal Defense & Education Fund, represents Ms. Ida Hammer in regard to the denial of pre-authorization of coverage for her genital reassignment surgery ("GRS") for the treatment of her Gender Identity Disorder ("GID") (ICD-9-CM 30285; DSM-IV-TR 302.85). As set forth in the benefits determination letters dated July 20, 2011, January 20, 2012, and August 6, 2012 (enclosed), pre-authorization for this surgery was denied because the surgery was considered "not medically necessary" and was deemed to fall within the "Cosmetic Surgery" exclusion of the MVP Health Care ("MVP") Certificate of Coverage (the "Policy"). Because Ms. Hammer's surgery is medically necessary and the cosmetic surgery exclusion does not apply, MVP must provide coverage for Ms. Hammer's GRS under the terms of the Policy.

The Policy

The Policy covers services which are “[o]rdered or prescribed by a Provider for the diagnosis or treatment...of a condition” and which “contribute[] to the overall diagnostic or therapeutic process for which the service is intended.” MVP Guide, Art I.B.25 (p. 7). To be covered, such services must be, among other criteria, “medically appropriate,” that is, the “expected health benefits...materially exceed the expected health risks,” the treatment must have been demonstrated to be “effective and of material clinical benefit to similarly situated patients in evidence-based, Peer Reviewed Medical Literature,” “equal or superior to other established therapies,” and must also be “[n]ecessary to meet the Member’s health needs, to improve the Member’s physiological function and required by the Member for a reason other than improving appearance.” *Id.* at 8. The Policy also generally excludes services rendered “in connection with cosmetic surgery, which is primarily intended to improve appearance.” *Id.*, Art. XII.J (p. 53).

Ms. Hammer’s Diagnosis and Treatment

As explained in greater detail in the enclosed July 23, 2012 submission (Ex. A, pp. 6-10), Ms. Hammer is a transgender woman. Her physician diagnosed her as having

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Ms. Hammer also consulted with Dr. REDACTED M.D., the surgeon who would perform the GRS. On December 29, 2011, Dr. REDACTED wrote to MVP that: “[i]t is my opinion that Ms. Hammer is an appropriate candidate for Genital Reassignment Surgery, and indeed would benefit from this procedure. Ms. Hammer meets the criteria for a DSM IV diagnosis of Gender Identity Disorder and I believe that it is medically necessary for her to undergo genital reassignment surgery.” Dr. REDACTED office submitted a pre-service claim for the surgery on June 23, 2011.

Denial of Coverage

On July 20, 2011, MVP denied coverage for GRS under the Policy, asserting that “the services are not medically necessary” and are excluded under the Cosmetic and Reconstructive Surgery Exclusion. Ms. Hammer submitted an appeal on January 17, 2012. In its response, dated January 20, 2012, MVP upheld the denial, stating that “this request is considered not medically necessary.” On July 23, 2012, Ms. Hammer submitted her second appeal, including hundreds of pages of medical literature and other evidence supporting the medical necessity of GRS for the treatment of her GID (Ex. A). On August 6, 2012, MVP’s Second Level Appeals Committee upheld its prior denial of

coverage, repeating the explanation it provided in the first appeal decision that the request was not considered medically necessary.

MVP's assertion that GRS is not medically necessary for Ms. Hammer and that it is cosmetic surgery is untenable. GRS is not intended to improve Ms. Hammer's appearance. As described in detail in her July 23, 2012 letter, GRS is undertaken to relieve the symptoms of Ms. Hammer's GID and has been ordered in this case by a medical professional as part of the medical treatment necessary to meet Ms. Hammer's health needs.

GID is characterized by the American Medical Association as "a serious medical condition" that, if left untreated, "can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicide and death." GRS has been demonstrated to be effective in the treatment of GID and is part of the accepted standards of care for treatment of GID. In fact, the World Professional Association for Transgender Health's *Standards of Care* recognize that for those who do not experience relief from mental health care and hormone therapy, "surgery is essential and medically necessary to alleviate [GID]."

Indeed, ten days after Ms. Hammer presented these issues to the Second Level Appeals Committee, the American Psychiatric Association ("APA") issued a Position Statement on Access to Care for Transgender and Gender Variant Individuals, which notes that

long-standing medical and psychiatric literature exists that demonstrates clear benefits of medical and surgical interventions to assist gender variant individuals seeking transition. ... Access to medical care (both medical *and surgical*) positively impacts the mental health of transgender and gender variant individuals (emphasis added).¹

Specifically, the APA now officially "[r]ecognizes that appropriately evaluated transgender and gender variant individuals can benefit greatly from medical *and surgical* gender transition treatments." *Id.* (emphasis added). The APA also opposes the "categorical exclusions of coverage for such medically necessary treatment when prescribed by a physician." *Id.*

Because Ms. Hammer's GRS is medically necessary and is not intended to improve Ms. Hammer's appearance, Ms. Hammer is entitled to full coverage for the procedure under the terms of her policy with MVP. Accordingly, Ms. Hammer demands

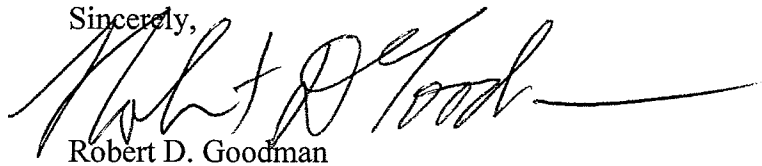
¹ American Psychiatric Association, *Position Statement on Access to Care for Transgender and Gender Variant Individuals* (July 2012) (Ex. C).

coverage of all claims and reimbursement for all out of pocket expenses associated with the GRS Ms. Hammer intends to undergo.

Ms. Hammer has exhausted her internal appeals and would prefer to resolve this issue without litigation, but if MVP continues to refuse to provide this coverage, Ms. Hammer will have no choice but to exercise her rights under Section 502(a) of the Employee Retirement Income Security Act ("ERISA") and pursue this matter in federal court.

Please send your response(s) directly to this office within 14 days of the receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Goodman", with a long horizontal line extending to the right.

Robert D. Goodman

Enclosures

cc: Michael D. Silverman, Esq.
Executive Director, Transgender Legal Defense & Education Fund