

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-407

XXXXX XXXXX,

Petitioner

v

Blue Cross & Blue Shield of Michigan,
Respondent

Agency No. 01-273-BC

Agency: Office of Financial & Insurance
Services

Case Type: Appeal
Subscriber/Provider

_____ /

**Issued and entered
this 21st day of February, 2002
by James L. Karpen
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Jorin G. Rubin, Attorney at Law, appeared on behalf of Petitioner, XXXXX XXXXX. Colleen C. Cohan, Attorney at Law, appeared on behalf of Respondent, Blue Cross and Blue Shield of Michigan.

This case stems from a March 16, 2001 Order Referring Complaint for Hearing and Order to Respond (Order). According to the Complaint appended to the Order, on December 20, 2000 Respondent appealed a Review and Determination dated October 24, 2000.

The hearing in this matter was originally scheduled for May 11, 2001. After each party obtained one adjournment, the parties stipulated to a third adjournment of the

hearing. Thereafter, the hearing was held as rescheduled on September 20, 2001. The record closed when the last reply briefs were received on February 12, 2002.

ISSUES AND APPLICABLE LAW

Petitioner is covered by a medical insurance policy issued by Respondent. Petitioner's teeth never erupted on the right side of her mouth. Petitioner also has severe bone loss in the upper and lower jaw on the right side. Petitioner's dentist recommended bone grafts on her upper and lower jaw followed by dental implants. Respondent, at the time of the hearing, agreed to pay for Petitioner's bone grafts, but refused to pay for the dental implants. Petitioner asserts that the dental implants are a covered benefit under the medical insurance policy issued by Respondent.

The Complaint, under "Applicable Law and Remedies" cites, "Section 402(1)(a) and (f) of the Act, MCL 500.1402(1)(a) and (f); MSA 24.660 (402)(1)(a) and (f)....", as the law applicable to this case.

Respondent is governed by The Nonprofit Health Care Corporation Reform Act, 1980 PA 350, as amended, MCL 550.1101 *et seq.* (Act). Sections 402(1)(a) and (f) of the Act provided:

Sec. 402. (1) A health care corporation shall not do any of the following:

(a) Misrepresent pertinent facts or certificate provisions relating to coverage.

* * *

(f) Fail to attempt in good faith to make a prompt, fair, and equitable settlement of a claim for which liability has become reasonably clear.

The Complaint also cites Section 403(1) of the Act, which provides:

Sec. 403. (1) A health care corporation, on a timely basis, shall pay to a member or a participating provider benefits as are entitled and provided under the applicable certificate. When not paid on a timely basis, benefits payable to a member shall bear simple interest from a date 60 days after a satisfactory claim form was received by the health care corporation, at a rate of 12% interest per annum. The interest shall be paid in addition to, and at the time of payment of, the claim.

In addition to these sections of the Act, the Complaint cites 1979 Administrative Code, R 550.108 (*sic*), as applicable to the present case. The correct citation, 1986 AACCS, R 550.108, provides:

Rule 108. (1) If the decision by the commissioner or the commissioner's designee indicates that the grievant's claim was wrongfully refused in violation of section 402 or section 403 of Act No. 350 of the Public Acts of 1980, as amended, being §550.1402 or §550.1403 of the Michigan Compiled Laws, the wrongfully refused claim shall be paid within 30 days of the date the decision is mailed to the health care corporation.

(2) A claim which is payable to a member shall bear simple interest from a date of 60 days after a satisfactory claim form was received by the health care corporation, at a rate of 12% interest per annum. The interest shall be paid in addition to, and at the time of payment of, the claim.

Thus, the issues in the present case are whether dental implants are a covered benefit under Petitioner's medical insurance policy with Respondent, and if they are, whether Respondent violated Section 402(1)(a) or (f) of the Act. Further, if dental implants are a covered benefit, whether Petitioner is entitled to collect interest on a claim under Section 403(a) of the Act and Rule 550.108.

SUMMARY OF THE EVIDENCE

Petitioner, XXXXX XXXXX was the first witness to testify at the hearing. XXXXX XXXXX, who is 33 years old, works as a medical assistant. Petitioner testified that as a result of a birth defect her baby teeth were fused to the bone on the right side and had to be removed. In 1984 her permanent teeth on the right side did not erupt and were also surgically removed. After 1984 Petitioner began wearing partial dentures which are connected to the teeth on the left side of her mouth by wires. Petitioner said that her gum line on the right side is shrinking back as the bone atrophies. Petitioner stated that the continued use of dentures will cause loosening of her permanent teeth on the left side of her mouth. Petitioner also testified that she is in pain about 90 percent of the time, that the pain in her jaw causes headaches and neck aches. Due to the loss of bone between the oral cavity and sinus cavity, Petitioner claimed she has had numerous sinus infections. Petitioner stated that chewing food is painful and she has problems pronouncing certain words. Petitioner disclosed she sucked her thumb as a child. Petitioner has dental insurance with "American Community," but has not filed a claim for benefits because she views her problem as medical, not dental.

The second witness to testify was Lori Boctor, a hearing officer for Respondent at managerial level conferences. It is Ms. Boctor's responsibility to investigate disputed claims. Ms. Boctor investigated Petitioner's claim. Boctor testified that dental implants are a dental benefits, not a medical benefit.

Dr. Irving Riley, D.D.S., an oral and maxillofacial surgeon is a consultant

employed by Respondent. He was qualified as an oral and maxillofacial surgical expert witness. Dr. Riley testified that implants are generally only payable under a dental policy. Dr. Riley suggested that Petitioner has other options besides dental implants such as vestibuloplasty, a surgical procedure to gain bone for construction of a dental prosthesis and bone grafting with synthetic bone. Dr. Riley disputed Petitioner's claim that her condition was a result of a birth defect. Dr. Riley stated that her teeth failed to erupt because of thumb sucking. He based his opinion on Petitioner's admitted thumb sucking and on the view that birth defects are usually bilateral, affecting both sides of the mouth. Dr. Riley also testified that a dentist is required by the standard of care to note patient complaints in the patient's dental records. Based on his review of Petitioner's dental records, he stated there were no indications that Petitioner's dentures were not functioning well or that she was in pain, suffering from sinus infections or headaches. Dr. Riley noted that Petitioner has not suffered significant bone loss since her permanent teeth were removed in 1984.

The parties also introduced various exhibits into evidence.

Petitioner's Exhibit 1 consists of an exchange of letters between Dr. Thomas Bloem, D.D.S., Petitioner's treating dentist and Dr. David Aldrich, D.D.S., the oral surgeon Petitioner wants to have perform the bone grafts and dental implants.

Exhibit 2 is the September 5, 2001 deposition of Dr. Aldrich. Petitioner was first referred to Dr. Aldrich by Dr. Bloem in June 1998. Dr. Aldrich testifies in Exhibit 2 that the cause of Petitioner's unerupted teeth is unknown. According to Dr. Aldrich, due to Petitioner's relative youth, she will chew for many years. If bone grafts are not accompanied by dental

implants, the bone under the dentures will be reabsorbed within two years, placing Petitioner in the same condition she is in right now. Dr. Aldrich states that the problem with partial dentures, such as those Petitioner currently has, is that the stress on the teeth on the left side of her mouth could cause them to loosen to the point where they would be lost. It was Dr. Aldrich's view that dental implants would anchor the bone grafts, preventing the reabsorption of the bone. Dr. Aldrich states that it would make no sense to do bone grafts without implants.

Exhibit 3 is the October 24, 2000 Review and Determination in this case in which it was determined that bone grafts to Petitioner's upper and lower jaw and dental implants in the lower jaw were a covered benefit under Petitioner's medical insurance policy with Respondent.

Exhibit 4 is the Community Blue Group Benefits Certificate, the medical insurance policy at issue in this case. On page 4.3 of Exhibit 4, dental surgery is a covered benefit on the jaw joint and dental cosmetic surgery is payable for deformities present at birth. Dental care, except for accidental injuries or multiple extractions, are not payable according to Exhibit 4, page 4.15. Maxillofacial prostheses are a covered benefit (page 5.5, Exhibit 4), but a maxillofacial prosthesis is defined on page 7.7 of Exhibit 4 as excluding the replacement of teeth or appliances to support teeth. Jaw joint disorders are

also defined on page 7.7 of Exhibit 4. None of the items listed were discussed by any of the medical experts as applicable to Petitioner's problem with her unerupted teeth.

Exhibit 5 is a portion of Respondent's Guide for Dental Care Providers.

Implants for the upper jaw are excluded from coverage under any policy issued by Respondent. (Exhibit 5, page 11-8). Dental implants to the lower jaw are a covered benefit if various conditions are met, one of which is that there be no teeth in the lower jaw. (Exhibit 5, page 11-9).

Respondent's Exhibit A is a series of letters rejecting preauthorization for bone grafts and dental implants and further correspondence from Respondent to Petitioner concerning review of her claim.

Exhibit B consists of Petitioner's medical record, correspondence from Dr. Aldrich and between Respondent and Petitioner concerning her claim.

Exhibit C is Dr. Riley's curriculum vitae.

Exhibit D is a portion of Respondent's Guide for Dental Care Providers which is substantially similar to Petitioner's Exhibit 5.

Before turning to the specific findings of fact, several matters warrant comment.

First, there appears to be an unresolvable conflict in the medical evidence. Respondent's expert, Dr. Riley, testified that there are other alternatives to dental implants available to Petitioner. Petitioner's expert, Dr. Aldrich, testified explicitly that bone grafts would be useless without dental implants because the bone grafts would be reabsorbed within a few years. It is only necessary to resolve this conflict if the other facts in this case provide a basis for dental implants.

Second, Dr. Aldrich testified that the cause of Petitioner's unerupted teeth is unknown. Dr. Riley attributed Petitioner's condition to thumb sucking. The only evidence that

Petitioners' condition is the result of a birth defect is her own testimony. The medical evidence clearly outweighs Petitioner's lay opinion. Thus, Petitioner has failed to establish by a preponderance of the evidence that her condition is the result of a birth defect.

Third, since Petitioner's condition is not the result of a birth defect (ruling out cosmetic surgery), the only other basis for coverage would be as a jaw joint disorder. As previously noted Petitioner's diagnosis does not fit the definition of jaw joint disorder in Exhibit 4.

Fourth, Petitioner makes the general argument in her post hearing briefs that dental implants are medically necessary. However, as Respondent points out in its reply brief, medical necessity is not the determinant whether a medical procedure is covered under Petitioner's policy certificate with Respondent. As discussed *supra*, under Petitioner's policy and the dental care guidelines, dental implants are not available under any circumstances for the upper jaw and are only available for the lower jaw if all the lower teeth are removed or missing.

Fifth, although the Review and Determination found that dental implants for Petitioner's lower jaw were a covered benefit, no supporting rationale was provided.

Based on the foregoing discussion, it is evident that Petitioner has failed to prove by a preponderance of the evidence that dental implants are a covered benefit under her medical insurance policy with Respondent. It has also been established in this case by Respondent's stipulation, that the bone grafts to Petitioner's upper and lower jaw are a covered benefit under Petitioner's policy.

FINDINGS OF FACT

Based upon the entire record as discussed above, I make the following findings of fact.

1. Petitioner, XXXXX XXXXX is covered by a medical insurance certificate (Community Blue Group Benefits) issued by Respondent, Blue Cross and Blue Shield of Michigan.
2. Petitioner suffers from a congenital defect of unknown origin that has prevented the eruption of her teeth on the upper and lower right side of her jaw.
3. Petitioner, as a result of this condition, has suffered significant bone loss on the right side of her jaw.
4. Petitioner sought preauthorization from Respondent under her certificate for bone grafts and dental implants to the upper and lower right side of her jaw.
5. Respondent initially denied authorization for the bone grafts and dental implants.
6. At the hearing in the instant case, Respondent stipulated that the bone grafts requested by Petitioner are a benefit covered under Petitioner's certificate.
7. Petitioner has failed to establish by a preponderance of the evidence that dental implants are a covered benefit under her certificate.

CONCLUSIONS OF LAW

As is evident from the foregoing, Petitioner is not entitled to have Respondent

pay for dental implants. Petitioner is covered under a separate policy of dental insurance; perhaps implants are a covered benefit under that policy.

There was no evidence introduced at the hearing which indicated Respondent had made misrepresentations concerning the coverage afforded by its certificate. Moreover, as Respondent's stipulation to cover Petitioner's bone grafts indicates, Respondent has made a good faith effort to reach a fair settlement of Petitioner's claim. Respondent was not required to pay for dental implants.

Section 403 of the Act and Rule 550.108 have no applicability to the present case since there was no claim pending which Respondent refused to pay.

PROPOSED DECISION

Under the circumstances described above, I recommend that the complaint in this case be dismissed with the condition that Respondent pay for bone grafts to the upper and lower right side of Petitioner's jaw as stipulated to at the hearing.

EXCEPTIONS

The parties may file exceptions to this Proposal for Decision within 20 days after the Proposal for Decision is issued and entered. An opposing party may file a response within 15 days after exceptions are filed. Exceptions shall be filed with the Office of Financial and Insurance Services, Division of Insurance, 611 West Ottawa Street, 2nd Floor, P.O. Box 30220, Lansing, Michigan 48909, Attention: Dawn Kobus.

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James L. Karpen
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