

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

In the matter of:

██████████
Petitioner

v
Blue Cross Blue Shield of Michigan
Respondent

File No. 149774-001

Issued and entered
this 9th day of October 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On September 10, 2015, ██████████, authorized representative of ██████████ (Petitioner), filed a request with the Department of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On September 17, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits through an individual plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Petitioner's health care benefits are described in BCBSM's *Blue Cross Premier Silver Benefits Certificate*.

The medical issues in this case were evaluated by an independent review organization which provided its analysis and recommendation to the Director on September 30, 2015.

II. FACTUAL BACKGROUND

On June 2, 2015 the Petitioner had surgery to repair a sports hernia. BCBSM denied coverage for the services on the basis that the surgical procedure was investigational for treatment of his condition.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM issued a final adverse determination on August 17, 2015, affirming its denial. The Petitioner now seeks review of that determination from the Director.

III. ISSUE

Was the Petitioner's June 2, 2015 surgery investigational for treatment of his condition?

IV. ANALYSIS

BCBSM's Argument

In its August 17, 2015 final adverse determination, BCBSM stated that it denied coverage because the surgical services were investigational:

After a thorough review, I confirmed that the claim processed correctly. The services are investigational, and are not covered by Blue Cross Blue Shield of Michigan (BCBSM). [Petitioner] is responsible for any non-covered charges billed by Barnes Jewish Hospital, a PPO provider.

[Petitioner] is covered under the *Blue Cross Premier Silver Benefits Certificate*. **Section 6: General Conditions of Your Contract**, pages 142-143, explains that BCBSM does not pay for experimental treatment or services related to experimental treatment. [In] **Section 7: Definitions**, page 160, experimental treatment is defined as treatment that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional treatment. Sometimes it is referred to as "investigational" or "experimental services." **Section 4: How Providers Are Paid**, page 126, explains that the member may be billed for noncovered services determined by BCBSM to be experimental when provided by a PPO provider.

In order to ensure all consideration was provided for your appeal, a board-certified M.D., in General Surgery reviewed [Petitioner's] claim and health care plan benefits, as well as your appeal, for Blue Cross Blue Shield of Michigan (BCBSM). Our consultant determined:

All of the documentation was reviewed. The facility is requesting payment for repair of "athletic pubalgia" on June 2, 2015. We are unable to approve payment at this time as the BCBSM interim medical policy entitled "Sports Hernia/Pubalgia" considers surgical repair for treatment of sports hernia investigational.

Petitioner's Argument

In his request for an external review, the Petitioner's authorized representative wrote:

BCBSM has denied both the surgical facility charge and surgeon's professional fee for an open, bilateral inguinal floor repair and partial abductor release. This

surgery was performed in order to treat an athletic pubalgia/sports hernia injury....BCBSM has improperly designated this procedure as “experimental.” According to the surgeon, surgical intervention has been firmly accepted in the surgical community as an effective treatment for chronic exertional lower abdominal inguinal pain (i.e., sport’s hernia, athletic pubalgia or inguinal disruption injury).

Director’s Review

The *Premier Silver* certificate (page 142) excludes coverage for services that are experimental or investigational and therefore, are not medically necessary. To evaluate the question of whether the repair of athletic pubalgia was investigational for treatment of the Petitioner’s condition, the Director presented the issue to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient’s Right to Independent Review Act, MCL 550.1911(6).

The IRO reviewer is a physician in active practice who is board certified in surgery and critical care and is published in peer reviewed literature. The reviewer is familiar with the medical management of patients with the Petitioner’s condition. The IRO reviewer’s report included the following analysis and recommendation:

The member had bilateral chronic adductor tendinopathy and bilateral athletic pubalgia injury documented by examination and imaging studies. The member was unresponsive to conservative treatment and physical therapy. On 6/2/15, the member underwent open bilateral inguinal floor repair with partial adductor release.

[B]oth the American Academy of Orthopedic Surgeons and the British Hernia Society have issued position statements that indicate that following failure of rest, conservative measures and physical therapy, surgical repair may be necessary for this member’s diagnosis....[T]he member meets these criteria. One article reported results of repair of these injuries reducing pain and shortening times. Another article reported on two decades of experience with 5,460 operations in over 8,000 patients and demonstrated efficacy of repairing this type of injury....[T]he efficacy of these services has been established....[T]he surgery that the member underwent is not an experimental/investigational treatment....[T]his procedure is standard of care and was medically necessary for treatment of the member’s condition. [Citations omitted.]

Pursuant to the information set forth above and available documentation...the repair of athletic pubalgia that the member underwent on 6/2/15 was not investigational for treatment of his condition.

While the Director is not required in all instances to accept the IRO's recommendation, the recommendation is afforded deference by the Director. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). In a decision to uphold or reverse an adverse determination the Director must cite "the principal reason or reasons why the [Director] did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's certificate of coverage. See MCL 550.1911(15).

The Director, discerning no reason why the IRO's recommendation should be rejected in the present case, finds that the Petitioner's June 2, 2015 surgery was not investigational and therefore is a covered benefit.

V. ORDER

The Director reverses BCBSM's August 17, 2015 adverse determination. BCBSM shall immediately provide coverage for the Petitioner's June 2, 2015 surgery, and shall, within 7 days of providing coverage, furnish the Director with proof it has implemented this order.

To enforce this order, the Petitioner may report any complaint regarding the implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, at this toll free number: (877) 999-6442.

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 Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin
Director

For the Director



Randall S. Gregg
Special Deputy Director