

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

In the matter of:

██████████,

Petitioner,

File No. 151969-001

v

Blue Cross Blue Shield of Michigan,

Respondent

Issued and entered
this 24th day of February 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) had a lip biopsy. Her health care insurer, Blue Cross Blue Shield of Michigan (BCBSM), declined to cover it on the basis that the biopsy was not performed by a qualified provider.

On February 1, 2016, the Petitioner filed a request with the Director of Insurance and Financial Services for an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted, the Director accepted the request on February 8, 2015.

The Petitioner receives health care benefits under a group plan that is underwritten by BCBSM. The Director immediately notified BCBSM of the external review request and asked for the information it used to make its final adverse determination. BCBSM responded on February 16, 2016.

The issue in this external review can be decided by a contractual analysis. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in BCBSM's *Simply Blue HRA Group Benefits Certificate SG*¹ (the certificate).

On July 14, 2015, the Petitioner had a biopsy of lip (CPT code 40490) performed by [REDACTED], DMD, a nonparticipating dentist and oral maxillofacial surgeon. The charge was \$340.00. When the Petitioner submitted a claim for payment, BCBSM said the surgery is not covered when performed by a dentist with [REDACTED] specialty.

The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process, BCBSM issued a final adverse determination dated January 11, 2016, affirming its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny coverage for the lip biopsy performed by [REDACTED]?

IV. ANALYSIS

BCBSM's Argument

In its final adverse determination, BCBSM's representative told the Petitioner:

... After review, I have confirmed that BCBSM's original payment determination for this claim was correct. The surgery that was performed is not covered if it is provided by a dentist with [REDACTED] specialty. As a result, I must maintain denial of payment for the charge of \$340.00.

You are covered under the *Simply Blue HRA Group Benefits Certificate SG*. On page 97 of **Section 3: What BCBSM Pays For**, your certificate states that, subject to cost-share requirements, BCBSM pays for hospital, facility and professional services for surgery performed in a participating inpatient or outpatient hospital, a participating freestanding ambulatory surgery facility, or in a professional provider's or physician's office. Coverage for surgical services is subject to limitations that are detailed in BCBSM's Benefit Package Report for your group. Specifically, the lip biopsy that you received is covered when performed by a dentist when he or she has a specialty of "Oral Surgeon."

Because BCBSM records reflect that [REDACTED] does not have the necessary specialty, BCBSM is unable to offer payment for this service. I understand your

¹ BCBSM form no. 912F, effective 2015.

concern with the out-of-pocket cost of this service, and I realize that you were referred specifically to the dentist who performed your biopsy. However, BCBSM is required to administer benefits in accordance with the contractual provisions of your group coverage, and I am unable to make an exception on your behalf.

Petitioner's Argument

The Petitioner says she was referred to [REDACTED] "to remove a lump from the inside of my mouth." She believes that [REDACTED] is correctly credentialed to perform the lip biopsy. On the external review request form, she said that [REDACTED] is registered as an oral surgeon and provided his National Provider Identification (NPI) number and taxonomy number to substantiate her assertion.

The Petitioner wants BCBSM to reprocess the claim and apply its approved amount to her out-of-network deductible.

Director's Review

The Michigan Department of Licensing and Regulatory Affairs professional license registry shows that [REDACTED], DMD, currently has an active license as an oral surgeon in the State of Michigan through August 19, 2018.

BCBSM said in its final adverse determination that the Petitioner's surgery "is covered when performed by a dentist when he or she has a specialty of 'Oral Surgeon.'" BCBSM's "Explainer" also indicates that CPT code 40490 is payable when performed by a DMD with a specialty of "oral surgeon."

[REDACTED] is an oral surgeon. Therefore, the Director finds that the Petitioner's lip biopsy was a covered benefit under her health plan.

It is BCBSM's position, as expressed in its grievance notes, that the lip biopsy "is payable if it is performed by an oral surgeon who is not a dentist." However, BCBSM did not provide any documentation to support that assertion and the Director found nothing in the documents submitted for review that would lead to that conclusion.

V. ORDER

The Director reverses BCBSM's January 11, 2016, final adverse determination. BCBSM shall immediately cover the Petitioner's lip biopsy on July 14, 2015. BCBSM shall, within seven days of providing coverage, furnish the Director with proof that it has implemented this Order.

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

This is a final decision of an administrative agency. 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 Michigan county where the covered person resides or in the circuit court of Ingham County. MCL550.1915 (1). 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:

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg
Special Deputy Director