

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

In the matter of:

██████████,

Petitioner,

v

File No. 153640-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 13th day of June 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. BACKGROUND

██████████ (Petitioner) was denied coverage for an endoscopic procedure by her health plan.

On April 15, 2016, ██████████, MD, the Petitioner's authorized representative, filed a request with the Director of Insurance and Financial Services for an external review of that denial under Public Act No. 495 of 2006 (Act 495), MCL 550.1951 *et seq.* On May 11, 2016, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits through a plan sponsored by the Macomb Intermediate School District (the plan), a governmental self-funded plan as defined in Act 495. Blue Cross Blue Shield of Michigan (BCBSM) administers the plan. The Director immediately notified BCBSM of the external review request and asked for the information it used to make the plan's final adverse determination. BCBSM responded for the plan on May 24, 2016.

Section 2(2) of Act 495, MCL 550.1952(2), authorizes the Director to conduct this external review as though the Petitioner were a covered person under the Patient's Right to Independent Review Act, MCL 550.1901, *et seq.*

Because the case involves a medical issue, it was assigned to an independent medical review organization, which provided its analysis and recommendation to the Director on June 1, 2016.

II. FACTUAL BACKGROUND

The Petitioner's benefits are described in the *Community Blue Group Benefits Certificate ASC* (the certificate).¹

The Petitioner has achalasia, a condition that makes it difficult to move food from the esophagus to the stomach. Her physician asked the plan to cover surgery called "peroral endoscopic myotomy" (POEM), a minimally invasive procedure performed to treat disorders such as achalasia. BCBSM denied coverage, saying the procedure is experimental.

The Petitioner appealed the denial through the plan's internal grievance process. At the conclusion of that process, BCBSM issued a final adverse determination dated April 19, 2016, affirming the denial. The Petitioner now seeks the Director's review of that final adverse determination.

III. ISSUE

Did the plan properly deny coverage for the proposed POEM procedure?

IV. ANALYSIS

Respondent's Argument

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

After review, I confirmed the denial of preauthorization must be maintained. The service requested, peroral endoscopic myotomy (POEM), has been determined to be experimental / investigational by the BCBSM / Blue Care Network (BCN) Joint Uniform Medical Policy Committee (JUMP). The member's health care plan does not cover experimental or investigational services. Therefore, preauthorization cannot be approved.

* * *

To ensure every consideration was given to this appeal, a medical consultant, board-certified M.D. in General Surgery reviewed the submitted documentation. The medical consultant concluded:

All submitted documentation for the proposed peroral endoscopic myotomy for the treatment of achalasia [POEM] service was reviewed. At this point in time the procedure is considered investigational under the Blue Cross Blue Shield of Michigan medical policy "Peroral Endoscopic Myotomy for Treatment of

¹ BCBSM form no. 457F, effective 2016.

Esophageal Achalasia." There are currently no randomized controlled studies comparing POEM with other treatment options.

Experimental or investigational services are not a benefit and cannot be approved for payment. Therefore, preauthorization for peroral endoscopic myotomy could not be approved. The member will be liable for all charges if the procedure is performed.

Petitioner's Argument

On the Petitioner's external review request form it said:

Patient has had a problem for over one year with eating and keeping food down. Patient is not losing weight as well as having nausea and vomiting. She has been diagnosed with Achalasia. Dr. [REDACTED] would like to perform a POEM (peroral endoscopic myotomy).

This procedure is less invasive than a laparoscopic Heller procedure which has been recommended to the patient. Recovery time for a POEM procedure is far less than a Heller procedure.

Dr. Barawi has performed many POEM procedures and we have been paid by the insurance company. These patients are doing well.

Dr. Barawi's progress notes from May 5, 2016, explained:

[The Petitioner] is a 57-year-old female patient with no significant medical history. Patient has been complaining of dysphagia to both solids and food for almost one month. Patient dysphagia has gotten worse, she has dysphagia with each meal. She has occasional dysphagia. She has no chest pain.

Patient continues to lose weight. Patient had an EGD which showed dilated esophagus with retained food in the esophagus. Esophagogram and manometry showed the diagnosis of achalasia. Patient was seen at University of Michigan, laparoscopic Heller's myotomy was recommended. Patient was referred to me for further evaluation and treatment. I recommended peroral endoscopic myotomy but her Blue Cross Blue Shield does not approve it, to consider the procedure as investigational procedure.

Director's Review

The certificate covers surgery (pp. 98 – 100). But the certificate also has this provision (p. 130):

Services That Are Not Payable

We do not pay for:

- Experimental treatment. This includes experimental drugs and devices

- Services related to experimental treatment. . . .

“Experimental treatment” is defined in the certificate (p. 147) as

[t]reatment that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional treatment. Sometimes experimental treatment is referred to as “investigational” or “experimental services.”

The question of whether the POEM procedure is experimental for the treatment of the Petitioner's achalasia was presented 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 physician reviewer is board certified in surgery, has been in practice for more than 15 years, and is familiar with the medical management of patients with the Petitioner's condition. The IRO reviewer's report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that peroral endoscopic myotomy is not experimental / investigational for treatment of the member's condition.

Rationale:

* * *

The member and her treating physician have chosen a minimally invasive approach to myotomy for treatment of her condition. The MAXIMUS physician consultant explained that the recent literature demonstrates over 90% relief of chest pain and 97% improvement of dysphagia using this minimally invasive procedure. The physician consultant indicated that myotomy is the gold standard for treatment of achalasia. The consultant also indicated that the performance of myotomy by the minimally invasive peroral endoscopic technique has been established in the literature.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that peroral endoscopic myotomy is not experimental / investigational for treatment of the member's condition.

[References omitted.]

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the IRO's recommendation is afforded deference by the Director. 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 coverage. MCL 550.1911(15). The Director, discerning no reason why the IRO's recommendation should be rejected in this case, finds that the peroral endoscopic myotomy is not experimental or investigational in the treatment of Petitioner's condition and is, therefore, a covered benefit under the terms of the certificate.

V. ORDER

The Director reverses the plan's April 19, 2016, final adverse determination.

The plan shall immediately cover the Petitioner's peroral endoscopic myotomy. The plan shall, within seven days of providing coverage, furnish the Director with proof it has implemented this order.

To enforce the 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 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 sixty 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. 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