

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. 150353-001

Blue Care Network of Michigan,  
Respondent.

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Issued and entered  
this 3<sup>rd</sup> day of November 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. BACKGROUND**

██████████ (Petitioner) was denied coverage for surgery by her health plan, Blue Care Network of Michigan (BCN), a health maintenance organization.

On October 14, 2015, she filed a request with the Director of Insurance and Financial Services for an external review of BCN's decision under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefit through an individual plan from BCN. The Director immediately notified BCN of the external review request and asked for the information it used to make its final adverse determination. BCN furnished its response on October 20, 2015. On October 21, 2015, after a preliminary review of the material submitted, the Director accepted the request.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's health care benefits. The Director reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner's health care benefits are described in BCN's *Certificate of Coverage for Individuals* (the certificate). The certificate was amended by the *Blue Cross Partnered Network Rider—Trinity West Network* (the rider).

The Petitioner has a history of skin cancer. On December 16, 2014, she had surgery to remove a malignant squamous cell carcinoma lesion from her lower left leg. The total charge for the surgery was \$4,407.78.

Neither the surgeon nor the facility where the surgery was performed were [REDACTED] and BCN denied coverage because the services were not pre-authorized. The Petitioner appealed the denial through BCN's internal grievance process. At the conclusion of that process, BCN issued a final adverse determination dated September 25, 2015, upholding the denial. The Petitioner now seeks a review of that final adverse determination from the Director.

### III. ISSUE

Did BCN properly deny coverage for the Petitioner's December 16, 2014, surgery?

### IV. ANALYSIS

#### Respondent's Argument

In its final adverse determination, BCN told the Petitioner:

The [*grievance*] Panel reviewed all of the documentation you submitted, the letters submitted by your Primary Care Physician . . . and Dermatologist . . . , along with your medical records and your Blue Care Network Individual Certificate of Coverage. The Panel maintained the denial, stating that per your Blue Care Network Individual Certificate of Coverage with a Trinity West Provider network, you are required to obtain pre-authorization and use in network resources located in Michigan for services.

#### Petitioner's Argument

The Petitioner is a resident of Michigan but spends the winters in Alabama. In a letter dated October 10, 2015, that was included with the external review request, the Petitioner wrote:

I could not schedule all of my procedures before we were leaving for [REDACTED].

We were instructed by my Dermatologist in Michigan . . . to find a plastic surgeon as soon as we arrived in [REDACTED]. We contacted [a] plastic surgeon, and he removed all of my invasive squamous cell carcinoma. (Blue Cross paid for all [of] them). There was one on my left leg that needed to be done in the hospital. (This is the one you are denying.)

As in [my dermatologist's] report, my treatment needed to be addressed ASAP, or we were risking local spreading, metastasizing or even death. The reason I could not have them removed in [Michigan] was because I go south in the winter months because of my health, as explained in [my family doctor's] report . . . .

My husband and I live down south for 5½ months. We cannot come back to Michigan until spring (late April) because we live in a travel trailer at [REDACTED]. The

water is turned off until spring, which makes it impossible for us to live there. Because of my health and no place to live, and my surgeon telling me to get my cancer addressed as soon as possible, coming back to Michigan was not an option.

We are . . . having a very hard time paying our premiums, co-pays, deductibles etc., and then [BCN] won't pay for a procedure that I had done in [REDACTED]. This may have been the difference of me living or dying.

We are just asking [BCN] to reconsider [its] decision on this bill. We cannot afford it. This is why I pay for my insurance to [BCN], so that I can be able to live. If I don't stay on top of my Melanoma carcinoma cells, it will be to my demise, as the doctors have told me.

If I have to pay this bill I will not be able to afford my insurance premium, and I don't know what will happen to me. Please reconsider. I hope you can help me.

Director's Review

Outpatient services, like the surgery the Petitioner received, are a benefit under the certificate (p. 33):

**8.5 Outpatient Services**

Facility and professional (physician) therapeutic and non-preventive diagnostic laboratory, pathology and radiology services and other procedures when performed in an Outpatient Hospital setting, physician office, free standing center, or dialysis center for the diagnosis or treatment of a disease, injury or other medical condition are covered when they are Medically Necessary and Preauthorized by your treating physician and BCN.

Outpatient Services include but are not limited to:

- Surgical treatment; . . . [Underlining added]

The rider says:

DEFINITIONS

[REDACTED] is an individual Provider, Facility or other health care entity associated with the [REDACTED] that is contracted with BCN to provide you with Covered Services, and has agreed not to seek payment from you for Covered Services except for permissible Deductible, Copayments and Coinsurance.

[REDACTED] is an individual Provider, Facility or other health care entity not associated with the [REDACTED]. Unless the specific service is Preauthorized as required under the Certificate, the service will not be payable by BCN. You may be billed directly by the [REDACTED] and will be responsible for the entire cost of the service.

Your Certificate of Coverage is hereby amended to replace the terms "Participating Provider" and "Non-Participating Provider" with "[REDACTED]" and "[REDACTED]"

All Covered Services must be provided by a [REDACTED]. Non-emergent services rendered by a [REDACTED] [REDACTED] are not payable by BCN unless the service is Pre-authorized by [REDACTED] and BCN. [Underlining added]

These provisions make clear that pre-authorization is required to receive services (except emergency care) from a [REDACTED] Provider. BCN denied coverage for the Petitioner's December 16, 2014, surgery because it was not authorized and approved by BCN.

The Petitioner furnished letters of medical necessity for the surgery from her primary care physician and her dermatologist. However, there is nothing in the information provided by the two physicians that indicates pre-authorization was ever requested or approved. The Petitioner does not allege that pre-authorization was requested. Because pre-authorization from [REDACTED] and BCN for non-emergency out-of-network services was required but never obtained, BCN's may deny coverage.

The Petitioner explained why she was not able to schedule and complete her surgeries before leaving Michigan. However, the Director does not have the authority in a review under the Patient's Right to Independent Review Act to alter the terms and conditions of coverage under the circumstances of this case. Accordingly, the Director finds that BCN's denial of coverage for the Petitioner's December 16, 2014, surgery is consistent with the terms of the certificate and rider.

#### V. ORDER

The Director upholds BCN's September 25, 2015, final adverse determination.

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:

  
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Randall S. Gregg  
Special Deputy Director