

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. 153135-001

Blue Care Network of Michigan  
Respondent

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Issued and entered  
this 2<sup>nd</sup> day of May 2016  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

On April 8, 2016, ██████████ (Petitioner), filed a request for an external review with the Director of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The appeal concerns a denial of coverage issued by Blue Care Network of Michigan (BCN), a health maintenance organization. The Director notified BCN of the external review request and asked for the information used to make its final adverse determination. BCN responded on April 12, 2016. On April 15, 2016, after a preliminary review of the material submitted, the Director accepted the request.

The Petitioner's BCN health care benefits are described in the *BCN 1 for Large Groups* certificate of coverage. The issue in this external review can be decided by an analysis of the BCN 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 had Lasik eye surgery on July 10, 2015 at TLC Eyecare & Laser Centers in Ann Arbor. The amount charged for the surgery was \$3,916.00. The Petitioner paid TLC Eyecare and submitted a claim to BCN for \$775.00, the amount which the Petitioner believes BCN is obligated to pay. BCN denied coverage for this care indicating it was not a covered benefit under the *BCN 1 for Large Groups* certificate of coverage.

The Petitioner appealed the denial through BCN's internal grievance process. At the conclusion of that process, BCN issued a final adverse determination dated February 13, 2016, affirming the denial. The Petitioner now seeks the Director's review of that adverse determination.

### III. ISSUE

Did BCN properly deny coverage for the Petitioner's Lasik surgery?

### IV. ANALYSIS

#### Blue Care Network's Argument

In its final adverse determination to the Petitioner, BCN wrote:

The Step Two Panel has completed their review of your request for payment of \$750.00 toward Lasik eye surgery.

The Panel...reviewed your grievance submissions, your 2015 *BCNI for Large Groups* certificate of coverage and clarification of the MLA [master labor agreement] from the BCSM Key Account Manager for the State of Michigan. Based on this information, the Panel maintained the denial. Therefore, you are not eligible for payment of \$750.00.

To clarify further, the union mentioned in the MLA is MSEA. Lasik eye surgery was a benefit for MSEA members covered under the old plan design (employees hired prior to April 1, 2010). In October 2014, members covered under the old plan were moved to the new plan design covered for employees hired on or after April 1, 2010. Under this plan design, Lasik eye surgery is not a benefit. Lasik eye surgery was not a benefit under BCN.

#### Petitioner's Argument

With her request for external review, the Petitioner submitted a letter dated April 7, 2016, in which she wrote:

I received a letter dated 2/13/16 indicating that my appeal was denied. The letter indicates in paragraph 3 that member benefits changed in October 1, 2014. The current contract...still contains the language which indicates that laser surgery is a covered benefit.

Through phone conversations, I am aware that BCN spoke to the state and verified what should be covered. I filed a separate grievance directly with the union and Civil Service Commission. I again spoke on the phone with someone regarding the grievance, and was advised that it was going to be denied because the language changed in 2014. So, as I asked her to walk me through the union contract which shows it was covered, she advised I needed to use the online version as it was current. I asked her to visit the website with me and lo-and-behold, the language indicating it is a covered benefit was right there online for

her to see. At which point she said, I will have to get back with you. It has taken four weeks instead of two, but the CSC is now denying my ability to file the claim. In a new and unique twist, they don't talk about it being a benefit, they indicate they have no jurisdiction and that the HMO is who makes the final decision.

Director's Review

The *BCN I for Large Groups* certificate of coverage, in section 9, lists the medical services for which BCN does not provide coverage. Among these excluded services is radial keratotomy (eye surgery to correct nearsightedness).

The Petitioner's argument that BCN should provide coverage for her eye surgery is based on a provision that appears in a collective bargaining agreement between the State of Michigan and a state employee's union, the MSEA. The collective bargaining agreement is not consistent with the terms of the *BCN I for Large Groups* certificate of coverage. The bargaining agreement states that laser eye surgery is a covered benefit. The *BCN I for Large Groups* certificate of coverage excludes such surgery from coverage.

The Director has no authority to require BCN to provide coverage based on a collective bargaining agreement. In conducting reviews under the Patient's Right to Independent Review Act, the Director is only empowered to determine whether an insurer or HMO has correctly applied the terms of its insurance contract. In this case, BCN's denial of coverage is consistent with the terms of the *BCN I for Large Groups* certificate of coverage.

**V. ORDER**

The Director upholds BCN's February 13, 2016, 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 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. 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