

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. 154790-001

Health Alliance Plan of Michigan,

Respondent.

Issued and entered
this 19th day of August 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. BACKGROUND

██████████ (Petitioner) was denied coverage for a laparoscopic procedure by her health plan, Health Alliance Plan of Michigan (HAP).

On July 26, 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.*

The Petitioner receives health care benefits as a dependent under a group plan through HAP, a health maintenance organization. The Director immediately notified HAP of the external review request and asked for the information it used to make its final adverse determination. The Director received HAP's response on July 29, 2016. After a preliminary review of the information submitted, the Director accepted the request on August 2, 2016.

The issue in this external review can be decided by a contractual analysis. 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 defined in HAP's *HMO Group*

Subscriber Contract (the subscriber contract).

The Petitioner is a college student who resides full-time in ██████████ Michigan, outside of HAP's service area. She has a history of primary dysmenorrhea, pelvic pain, and possible endometriosis. Her physician in Kalamazoo, who is not affiliated with HAP, recommended a diagnostic laparoscopic procedure to treat her condition and asked HAP to authorize it. HAP denied the request saying it was not a covered benefit under her contract.

On May 31, 2016, the Petitioner requested an expedited internal grievance of HAP's denial. On June 1, 2016, before that appeal was decided, the Petitioner had the procedure. The expedited grievance was completed on June 2, 2016, and that same date HAP issued a final adverse determination upholding its denial. The Petitioner now seeks a review of HAP's final adverse determination from the Director.

III. ISSUE

Did HAP properly deny coverage for the Petitioner's diagnostic laparoscopy procedure?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination, HAP explained its decision to the Petitioner:

Background Information: On May 31, 2016, we received your Expedited Appeal requesting approval for a Laparoscopy that was scheduled Wednesday, June 1, 2016 ...

Health Alliance Plan (HAP) has a two level appeal process that requires members to submit, in writing, why they feel our decision should change. Each level must be completed in successive order before progressing to the next level. However, due to the nature of your medical condition and urgency of your case, the review of your request was expedited. Therefore, the levels of the appeal process were condensed into one level for review ...

Expedited Appeal Adverse Benefit Determination: The request for diagnostic laparoscopy for the diagnosis of pelvic and perineal pain has not been approved because it was determined that this surgery is considered elective. According to your Health Alliance Plan (HAP) Subscriber Contract, Coverage Period for a Dependent Child, elective

surgeries are not covered outside HAP's service area for students away at school. However, these medical services are covered if done with network (Henry Ford Health System) providers. Therefore, your request remains denied.

Petitioner's Argument

In an undated letter of appeal to HAP that was submitted with the external review request, the Petitioner explained her request:

... The procedure I need is a Laparoscopy, diagnostic or operative, with or without laser treatment or dilation and curettage.

I have had painful cramps since the age of 12. At first, I was only in pain during my menses. I am now in pain every day. The condition is getting worse. I have tried five oral contraceptives with little success ... I routinely take more than 2,000 mg of Naproxen each day. This amount is outside of the therapeutic range. I will develop stomach ulcers and decreased kidney and liver function if I am not able to stop taking the Naproxen soon.

* * *

My schedule is extraordinarily tight. I live year-round in [REDACTED] I am in the Nursing program at [REDACTED], MI. It is an extremely competitive program, and I spend all of my free time studying, reading, or at clinicals. I also work two jobs as a Patient Care Assistant (PCA) at [REDACTED] Hospital and as a Peer Mentor at [REDACTED]. I work 30 hours a week in addition to taking classes full time during the school year. During the summer, I work many overtime shifts at the hospital, working at least 43-72 hours each week.

Scheduling my surgery at Bronson in and of itself was challenging. Traveling to the Detroit area for surgery is impossible. Finding a doctor to do the surgery and being placed on the surgery schedule at a time that works for me would take at least a year ...

Director's Review

The Petitioner believes HAP should cover her laparoscopic surgery in [REDACTED] because it was medically necessary and because it was too difficult to schedule the surgery with a HAP affiliated provider while she was away at school. HAP says the surgery was elective and is therefore not a covered benefit.

The subscriber contract generally requires that all services be performed by an affiliated provider, i.e., "a health professional, licensed Hospital, licensed pharmacy or any other institution, organization, or person having a contract with [HAP]." The subscriber contract (p.1) says:

There are no benefits for services that are provided by Non-Affiliated Providers, except for treatment of an Emergency Medical Condition as defined in this Contract.

HAP does make some limited exceptions to this provision for students who are away at school but those exceptions do not include elective surgery. The subscriber contract (pp. 25, 32), in "Section 5 - Exclusions and Limitations," says:

The following are not covered under this Contract:

5.1 Non-Covered Services

* * *

w. Students Away at School

The following services are not considered Urgent Care or an Emergency and are not part of the coverage for students away at school. These services must be rendered by an Affiliated Provider in order to be covered:

* * *

3. All elective surgery or hospitalizations;

HAP also has a policy called "Students Away at School (School Out of Service Area)" that explains what services will be covered for eligible members who are attending school out of HAP's service area. It repeats the exclusion from coverage for elective surgery from a non-affiliated provider:

EXCLUSIONS

1. The following services are not covered under the Member's HAP Subscriber Contract.

* * *

b. All elective surgery or hospitalizations.

The Director concludes that the Petitioner had elective surgery from a non-affiliated provider on June 1, 2016, and therefore it is not a covered benefit. While the subscriber contract does not define "elective surgery" it is commonly defined as

a planned, non-emergency surgical procedure. It may be either medically required (e.g., cataract surgery), or optional (e.g., breast augmentation or implant) surgery.¹

While there seems to be no dispute that the Petitioner's laparoscopic surgery was medically necessary, it was still an elective procedure. There is nothing in the record on which the Director could base a determination that the procedure was an emergency and thus eligible for coverage. The subscriber contract (p. 52) says that an emergency medical condition is one that "starts suddenly and includes signs and symptoms so severe, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy" to the Petitioner's health. But the Petitioner did not require immediate medical attention. The surgery was planned around her schedule; an undated note from the Petitioner's physician at Bronson OB/GYN Associates indicated that "due to [the Petitioner's] busy schedule ... the surgery needed to be rescheduled several times."

Because elective surgery from non-affiliated providers is excluded from coverage, the Director finds that HAP's denial was consistent with the terms of the subscriber contract.

V. ORDER

The Director upholds HAP's 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 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

¹ <http://www.surgeryencyclopedia.com/Ce-Fi/Elective-Surgery.html> (accessed August 18, 2016).