

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 101025-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 23rd day of February 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 27, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on November 3, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on November 14, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate). The Commissioner 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 lives in XXXXX. She has coverage with BCBSM because her husband's employer is located in Michigan.

From November 6, 2007, through May 7, 2008, the Petitioner received infusion therapy at her home in XXXX from XXXX, a provider that does not participate with BCBSM or the XXXX Blue Cross Blue Shield plan and is not a PPO panel provider for BCBSM or the XXXX plan. The charge for this care was \$42,920.00. When BCBSM denied payment, the Petitioner appealed.

BCBSM held a managerial-level conference on September 10, 2008, and issued a final adverse determination dated September 24, 2008.

III ISSUE

Did BCBSM correctly deny coverage for the Petitioner's home infusion therapy?

IV ANALYSIS

Petitioner's Argument

The Petitioner requires Remicade infusion therapy because she suffers from Crohn's disease. She believes that under her BCBSM PPO plan she can use any provider she chooses, including those that are out-of-network, for home infusion therapy. She argues that the summary of benefits that was provided by her husband's employer indicates that she can use any provider.

The Petitioner says the infusion therapy was received under the "Home Infusion Therapy" provision of the certificate, not under the "Home Health Care Services" provision because she was not confined to her home. She further says that XXXX was the only provider available and therefore BCBSM was required to pay XXXX the same rate it pays a participating provider.

The Petitioner argues that the infusion therapy provided by XXXX is a covered benefit under her certificate and BCBSM is required to pay for it.

BCBSM's Argument

BCBSM says that the Petitioner obtained home infusion therapy services from a provider who is neither a participating provider nor a member of a PPO panel for either BCBSM or the XXXX Blue Cross Blue Shield plan. According to BCBSM, the certificate clearly states that BCBSM does not pay for home health services or home infusion therapy services provided by nonparticipating providers; the services are explicitly excluded from coverage under the certificate.

In response to the Petitioner's assertion that the summary of benefits she received did not say that home infusion services from a nonparticipating provider are not covered, BCBSM points out that the summary is just that – a summary. The summaries the Petitioner received for both the original PPO plan and the PPO plan with the health reimbursement arrangement state:

This is intended to be an easy-to-read summary. **It is not a contract.** Additional limitations and exclusions may be applied to covered services. For an official description of benefits, please see the applicable Blue Cross Blue Shield of Michigan certificate and riders. Payment amount are based on the Blue Cross Blue Shield of Michigan approved amount, less any applicable deductible and/or copayment amounts required by the plan. This contract is provided pursuant to a contract entered into in the state of Michigan and shall be construed under the jurisdiction and according to the laws of the state of Michigan. [Underlining added]

BCBSM argues that the Petitioner's home infusion therapy is not a covered benefit under the certificate and BCBSM is not required to pay for it.

Commissioner's Review

Under "Home Infusion Therapy" on page 3.40 of the certificate are these coverage guidelines:

This program provides coverage for home infusion therapy services whether or not you are confined to the home.

Services are limited only by the lifetime dollar maximum of this certificate. To be eligible for home infusion therapy services, your condition must be such that home infusion therapy is:

- Prescribed by the attending physician to manage an incurable or chronic

condition or treat a condition that requires acute care if it can be safely managed in the home

- Medically necessary...
- Given by **participating** home infusion therapy providers

Later in this same section, on Page 3.41, it states:

We do not pay for services rendered by **nonparticipating** home infusion therapy providers.

BCBSM says that XXXX does not participate with BCBSM or the XXXX BCBS and the Petitioner provided no information to the contrary. The certificate language is very clear; home infusion therapy must be provided by a participating provider to be covered. Therefore, the care provided to the Petitioner by XXXX is not a covered benefit and BCBSM is not required to pay for it. Nothing in Michigan law requires a different outcome.

Although it appears that the services the Petitioner received were home infusion therapy and not home health care, the Commissioner notes that the provisions in the certificate relating to home health care also require those services to be provided by a participating provider (see pages 3.37 – 3.40).

The Petitioner contends that her PPO plan with BCBSM permits her to choose any provider that she wants. However, she has not pointed to any language in the certificate or any rider to support that contention, and the Commissioner can find none. The Petitioner says that the only benefit information she received was a “Benefits-at-a-Glance” document that did not indicate that home infusion therapy must be provided by a participating provider. However, that document clearly states it is not the contract and that additional limitations and exclusions may apply. It also says that the certificate is the official description of benefits. Therefore, the Petitioner was on notice that the certificate is the only document that fully explains her benefits.

The Petitioner has also claimed, among other things, that BCBSM “wrongfully restructured and reworded” her contract to deny her benefits, intimidated her, and wrongfully denied her access

to her provider. She also says that XXXX law applies. However, those arguments must be taken up in court; they cannot be resolved in a review under the Patient's Right to Independent Review Act (PRIRA). Under PRIRA, the Commissioner is limited to deciding if the Petitioner was incorrectly denied covered benefits according to the terms and conditions of her contract. The Commissioner concludes that the Petitioner's home infusion therapy provided by XXXX was not a covered benefit because under the terms and conditions of the certificate it was not provided by a participating provider.

V
ORDER

BCBSM's final adverse determination of September 24, 2008, is upheld. BCBSM is not required to cover the Petitioner's home infusion therapy.

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 Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.