

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

Alana Craig
Petitioner

v

Physicians Health Plan of Mid-Michigan
Respondent

File No. 102516-001

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

ORDER

I
PROCEDURAL BACKGROUND

On January 16, 2009, Janelle Craig, on behalf of her minor daughter Alana Craig (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.* After a preliminary review of the material submitted, the Commissioner accepted the request on January 23, 2009.

The issue in this external review can be decided by a contractual analysis. The contract here is the certificate of coverage (the certificate) issued by Physicians Health Plan of Mid-Michigan (PHP). The Commissioner 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 is a member of PHPMM. Her health care benefits are defined in the certificate. The certificate provides for both network and non-network benefits. To obtain

network benefits, the care must be provided by an in-network provider. Care from non-network providers may be covered but it generally comes with a higher out-of-pocket cost for the PHP member. The certificate permits in-network benefits for out-of-network services when the services are not available from network providers or for emergency services.

On several dates in 2008, the Petitioner received telephone consultation services (CPT code 99373) from Phillip C. DeMio, MD. Dr. DeMio is not part of the PHPMM network. PHP initially covered the services at the non-network level but later recovered its payments and denied coverage. The Petitioner appealed but PHP maintained its denial.

The Petitioner exhausted PHP's internal grievance process and received its final adverse determination letter dated December 19, 2008.

III ISSUE

Did PHP properly deny coverage for the Petitioner's telephone consultation services?

IV ANALYSIS

PETITIONER'S ARGUMENT

On the following dates, January 23, 2008, April 29, 2008, July 11, 2008, and October 7, 2008, the Petitioner had telephone consultations with Dr. DeMio. The Petitioner's mother says the telephone consultations usually lasted for over an hour and included a review of lab tests. She says these consultations were the most complete she has ever experienced.

The Petitioner says PHP's reimbursement was extremely confusing -- it was not until November 10, 2008, that she understood why PHP was recovering the amounts paid because the explanation on benefits form never explained why she received the amount she was reimbursed. The Petitioner's mother noted in an undated letter to PHP:

Your checks to us have never ever explained what they were paying for and how that amount was arrived at. Despite my repeated phone calls to PHP with questions NO ONE explained to me why I had only received the amounts that I have, only that they would look into it and someone would call me back, which only happened occasionally. By November 10th we had already had four phone consultations with Dr. DeMio...for a total of \$796.00. I had made at least fifteen phone calls to PHP during the course of the year in an attempt for clarification.

The Petitioner thought she would have a 20% coinsurance payment because PHP covered the telephone consultations. She says if she had known they were not covered benefits, they would have driven to Cleveland for the office visits.

The Petitioner argues that because of all the confusion, inaccuracy, and delay PHP should pay all the involved claims with only a 20% copayment.

PHP'S ARGUMENT

PHP believes it is correct in denying coverage, saying in its final adverse determination that “[t]he original decision to deny your request was upheld because telephone consultations do not meet the definition of Covered Health Services” and are therefore excluded from coverage in the certificate. “Covered Health Services” are defined in the Section 10 of the certificate (p. 86):

Covered Health Service(s) – Those health services provided for the purpose of preventing, diagnosing or treating a Sickness, Injury, Mental Illness, substance abuse, or their symptoms.

A Covered Health Service is a health care service or supply described in Section 1: What’s Covered – Benefits as a Covered Health Service, which is not excluded under Section 2: What’s Not Covered – Exclusions.

It is PHP’s contention that while physician and other professional services are covered in “Section 1: What’s Covered – Benefits,” telephone consultations are not.

PHP acknowledges that a computer problem initially caused the Petitioner’s claims to be processed in error. But PHP says an audit in May 2008 caught the error and it is correct in

recalling its payments. PHP cites this provision from the certificate in “Section 9: General Legal Provisions” (page 78): “If a clerical error or other mistake occurs, that error will not deprive you of Benefits under the Policy, nor will it create a right to Benefits.”

PHP believes that in the end it was correct in denying coverage for the telephone consultations.

COMMISSIONER’S REVIEW

The Commissioner carefully reviewed the arguments and documents presented by the parties in this case. The issue in this case is whether PHP properly denied coverage for the Petitioner’s telephone consultations with Dr. DeMio.

In “Section 1: What’s Covered-Benefits” of the certificate (page 29), it describes covered health services, including physician office services:

23. Physician’s Office Services

Covered Health Services received in a Physician’s office including:

Covered Health Services for the diagnosis and treatment of a Sickness or Injury, including but not limited to:

- Radiology
 - Pathology
 - Diagnostic services
- [Underlining added]

Under this language, PHP covers physician services if they are received in the physician’s office.¹ There is no provision in the certificate for physician services received over the telephone. Therefore, the Commissioner finds that PHP’s denial of coverage was consistent with the terms and conditions of the certificate – telephone consultations are not a covered benefit.

¹ Physician services for surgery and other medical care received in a hospital, skilled nursing facility, rehabilitation facility, or alternate facility, and for physician house calls, are also covered but those circumstances do not apply in this case.

It is unfortunate that PHP's computer problems caused confusion and unexpected financial liability for the Petitioner. However, nothing in the certificate or state law prevents PHP from recovering payments made in error within the time period it did in this instance.

The Petitioner also impliedly argued that she detrimentally relied on PHP's erroneous claims processing when she proceeded with further treatments. Even if true, the Commissioner cannot decide this case on that issue because under the Patient's Right to Independent Review Act the Commissioner does not have the authority, which circuit courts possess, to order equitable relief.

V ORDER

The Commissioner upholds PHP's December 19, 2008, final adverse determination in the Petitioner's case. PHP properly denied Petitioner coverage for telephone consultations.

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 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.