

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. 100924-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 24th day of February 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 23, 2008, XXXXX, authorized representative of 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 initial request was incomplete. After additional information was provided the Commissioner reviewed the request and accepted it on November 17, 2008.

The Petitioner is enrolled for health care benefits through the Michigan Education Special Services Association (MESSA). The coverage is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 26, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the MESSA *Super Care 1 2003 Revision Plan Coverage Booklet* (the booklet) and the

booklet's Preventive Care Benefits Amendment (Amendment). 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 received tetanus and meningitis vaccinations on July 31, 2007, at XXXX Pharmacy. The amount charged for this care was \$235.00. BCBSM denied payment for this service.

The Petitioner appealed BCBSM's decision to deny coverage for his immunizations. BCBSM held a managerial-level conference on September 25, 2008, and issued a final adverse determination dated October 1, 2008.

III ISSUE

Is BCBSM required to cover the Petitioner's July 31, 2007, immunizations?

IV ANALYSIS

Petitioner's Argument

According to the Petitioner's mother, on July 31, 2007, she took her 18-year-old son to XXXX Pharmacy for meningitis and tetanus shots prescribed by his doctor. The clerk at the pharmacy advised her to check and see if these immunizations would be covered by the insurance company. The Petitioner's mother says she called MESSA to see if the shots would be covered, making it clear that the service was to be provided at a pharmacy. According to the Petitioner's mother, the woman at MESSA checked and assured her that the immunizations would be covered.

After receiving the immunizations at the pharmacy, the Petitioner was surprised when he received an explanation of benefits from BCBSM denying coverage. He argues that if his family had been given the correct information from MESSA he would have gone to another provider to have these shots.

The Petitioner believes that since his immunizations were medically necessary and MESSA led him to believe that they were a benefit that BCBSM is required to cover them.

BCBSM's Argument

BCBSM indicates that the Preventative Care Benefits Amendment includes coverage for immunizations. This amendment also says, among other things that:

Benefits under this rider are limited to professional provider services only; facility or hospital services are not included.

BCBSM says that "professional provider" in this context is a physician. In Section 25 of the booklet, "physician" is defined to include doctor of medicine (MD) or osteopathy (DO), optometrist, dentist, podiatrist, doctor of chiropractic, and psychologist. It is BCBSM's position, based on the language of the Preventive Care Benefits Amendment and the definition of "physician," that immunization provided at a pharmacy is not a benefit.

BCBSM also says that there is no recording of the call the Petitioner's mother said she made to MESSA, and that without such a recording it is impossible to determine exactly what question was asked of the MESSA customer service representative and what response was provided. Without additional information, BCBSM says the Petitioner's allegation that he was misled cannot be substantiated.

BCBSM believes that it is not required to cover the Petitioner's July 31, 2007 immunizations.

Commissioner's Review

BCBSM does not dispute that immunizations are a covered benefit for the Petitioner under the Preventive Care Benefits Amendment. BCBSM's sole reason for denying coverage is that the immunizations were not given by an appropriate provider.

The Preventive Care Benefits Amendment says that benefits "are limited to professional provider services only." BCBSM says that the term "professional provider" in this instance is synonymous with "physician," and since there is nothing in the booklet's definition of "physician" that includes pharmacy providers, it was correct in denying coverage. The Commissioner disagrees.

Neither the Preventive Care Benefits Amendment nor the booklet defines the term “professional provider.” There is nothing in the Amendment or the booklet that would reasonably lead one to conclude that immunizations could only be provided by a physician. Immunizations, even when given in physician’s office, are frequently administered by professional providers such as nurses and physician assistants. BCBSM may have intended that only physicians provide the preventive care benefits under the Amendment but that is not what the Amendment says. The only limits in the Amendment are that combined preventive care services are covered up to an annual maximum of \$300.00 per member and that facility or hospital services are not covered.

The Commissioner concludes and finds that BCBSM incorrectly applied the provisions of the Petitioner’s contract when it denied coverage for his July 31, 2007 immunizations provided at a pharmacy.

**V
ORDER**

BCBSM’s final adverse determination of October 1, 2008, is reversed. BCBSM shall cover the Petitioner’s July 31, 2007, immunizations subject to any limits on approved amounts for services and the \$300.00 benefit maximum.

BCBSM shall cover the immunizations within 60 days and provide the Commissioner with proof it has implemented this Order within seven days of implementation. To enforce this Order, the Petitioner should report any complaint regarding its implementation to the Office of Financial and Insurance Regulation, Health Plans Division, at this toll-free number: (877) 999-6442.

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.