

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. 102650-001

v

Blue Care Network of Michigan
Respondent

_____ /

Issued and entered
this 18th day of March 2009
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On January 27, 2009, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office 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 February 3, 2009.

The Commissioner notified Blue Care Network (BCN) of the external review and requested the information used in making its adverse determination. The company provided its information on February 11, 2008.

The issue in this matter can be resolved by analyzing the BCN 1 certificate of coverage (the certificate), the contract that defines the Petitioner's health care coverage. The Commissioner reviews contractual issues under MCL 500.1911(7). No medical issues are presented requiring analysis by an independent medical review organization.

II FACTUAL BACKGROUND

On April 21 and April 26, 2007, the Petitioner received in vitro fertilization (IVF) services from Sparrow Hospital (Sparrow), Dr. XXXXX, and XXXXX, all BCN network providers. BCN denied coverage because IVF and all related services are not covered benefits.

The Petitioner exhausted BCN's internal grievance process and received its final adverse determination letter dated December 15, 2008.

III ISSUE

Did BCN properly deny the Petitioner retro-authorization and coverage for IVF services?

IV ANALYSIS

PETITIONER'S ARGUMENT

On April 20, 2007, the Petitioner prepaid for IVF treatment from Sparrow Hospital and XXXXX. Before receiving these services the Petitioner says her husband contacted BCN to inquire whether or not the services would be covered and he was advised that he would need to get specific procedure codes and submit them on a BCN member reimbursement form.

The Petitioner says she made the decision to proceed with treatment based on the information BCN gave to her husband. She obtained the procedure codes and later her husband sent the completed forms to BCN¹ and submitted reimbursement forms.

BCN initially covered the IVF and related services but later recovered the payments from the providers, saying they were paid in error. However, the Petitioner says that on August 28, 2007, representatives of Sparrow and BCN discussed what parts of the procedures would be covered by BCN, and Sparrow subsequently refunded \$2,329.97 to the Petitioner. However,

¹ The Commissioner notes that the Petitioner made a decision to proceed with treatment before these forms were submitted.

after BCN recovered its payments to them, Sparrow and XXXXX sought payment from the Petitioner and now she is responsible for all the charges.

The Petitioner believes BCN should retro-authorize and cover the IVF and related services provided because:

- Her coverage documents were vague as to what was covered;
- BCN representatives provided inaccurate information to Petitioner's husband; and
- The Petitioner relied on BCN's information in making her decision to proceed with treatment.

BCN'S ARGUMENT

In its final adverse determination letter, BCN explained that IVF treatment is excluded under the terms of the certificate. BCN says the certificate provides only limited coverage of reproductive and family planning services and specifically excludes IVF. The certificate states in pertinent part:

II. EXCLUSIONS AND LIMITATIONS

* * *

2.12 SPECIAL ELECTIVE PROCEDURES

Reversal of surgical sterilization, in vitro fertilization procedures (GIFT and ZIFT), artificial insemination (except for treatment of infertility) and all services related to surrogate parenting arrangements, including but not limited to maternity and obstetrical care for non-Member surrogate parents, are not covered under this Certificate. Transsexual surgery and preparatory treatment thereto are not covered. Radial keratotomy is not covered.

BCN says that the payments it made for the Petitioner's treatment were made in error. BCN acknowledges that its coverage documents are vague regarding available family planning services, but it argues that the certificate is clear that IVF is not covered.

COMMISSIONER'S REVIEW

The issue in this case is whether BCN properly denied coverage for IVF and related services. The BCN certificate controls the analysis here.

BCN denied coverage on the basis that IVF is not a covered benefit, citing the exclusion in section 2.12 on page 11 of the certificate (quoted above). However, the Schedule of Benefits (subsection 1.04 on page 2) also contains this requirement: "Outpatient services, including chemotherapy, delivered in a hospital or other facility approved by Health Plan are a benefit when authorized by the Plan Physician." These provisions are the basis of the Commissioner's decision in this case.

The Petitioner argued she detrimentally relied on the representations of BCN's representative and its coverage document when she decided to proceed with treatment. Although BCN's information may have been less than precise, the Petitioner had an opportunity to read the certificate and the certificate clearly says that BCN does not cover IVF services.

In addition, outpatient services (other than emergency care) must be authorized in advance by a plan physician. The record in this case fails to demonstrate advance authorization. Although the Petitioner contends she relied on BCN's information, it seems apparent that her providers were aware that IVF was not covered since they required payment before rendering services. An HMO network provider cannot require advance payment for covered services.

The Commissioner is sympathetic to the Petitioner's situation but is unable to order the remedy she seeks. Under the Patient's Right to Independent Review Act, the Commissioner's role in this case is limited to determining whether BCN properly administered benefits under the terms and conditions of the Petitioner's certificate, its riders, and state law. The certificate is the contract in this matter, and its terms and conditions control. Accordingly, the Commissioner finds that BCN's final adverse determination is consistent with its certificate.

V
ORDER

The Commissioner upholds BCN's December 15, 2008, final adverse determination in Petitioner's case. BCN properly denied coverage for the Petitioner's IVF services.

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.