

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. 101652-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 20th day of March 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On November 25, 2008, XXXXXX, on behalf of his minor son 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 December 4, 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 December 9, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the MESSA *Choices II Group Insurance for School Employees* coverage booklet (the booklet). 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

In early August 2008, the Petitioner sought preauthorization for braces and retainers to treat a tooth that is erupting above the gum line. His orthodontist submitted a treatment plan with the request. The proposed cost for this care was \$5,220.00.

MESSA/BCBSM denied preauthorization, saying the proposed treatment plan did not meet criteria for coverage. The Petitioner appealed BCBSM's denial. After a managerial-level conference on September 3, 2008, BCBSM maintained its denial and issued a final adverse determination dated October 8, 2008.

III ISSUE

Is BCBSM required to cover the Petitioner's requested orthodontic care?

IV ANALYSIS

Petitioner's Argument

The Petitioner has a tooth that is above the gum line and will not fall into place. According to his orthodontist, he requires braces from:

First molar to first molar to open space for the maxillary unerupted left cuspid and first bicuspid that are palatally situated. * * * Attachments will be placed on the unerupted teeth and they will be guided into correct position using elastic thread and elastic chains tied from the attachments to the upper braces. When the left maxillary cuspid and bicuspid are close to their correct position, lower braces will be placed in order to coordinate the maxillary and mandibular arches for proper occlusion. Maxillary and mandibular retainers will be used after 14 to 18 months of braces. Retainers will be worn for approximately two years post treatment.

Since the MESSA/BCBSM booklet covers the removal of impacted teeth, the Petitioner argues that his proposed orthodontic care is similar since it deals with an impacted tooth. Therefore, he believes his care is a covered benefit and MESSA/ BCBSM is required to pay for it.

BCBSM's Argument

BCBSM indicates that dental services under the booklet are limited to the following in "Section 8: Other Covered Health Care Services" (page 44):

Dental Services

Dental treatment by a licensed dentist or dental surgeon required because of an accidental injury to sound natural teeth sustained while covered by this plan and only if coverage has been continuous since the date of the accidental injury. Charges by a dental surgeon for the removal of cysts and tumors of the mouth and jaw, and the extraction of impacted teeth are covered.

Further, the booklet has this provision in *Section 10: Exclusions and Limitations* on at page 48:

The following exclusions and limitations apply to the MESSA Choices II Program. These are in addition to limitations appearing elsewhere in this coverage booklet.

* * *

- dental care (except as previously specified) including repairs of supporting structures for partial or complete dentures, dental implants, extractions, extraction repairs, bite splints, braces and appliances and other dental work or treatment. (Emphasis added)

BCBSM says that its denial of preauthorization of dental services is in accord with the terms of the Petitioner's coverage – the booklet specifically excludes coverage for braces and retainers. BCBSM says these services are considered dental care and should be submitted to the Petitioner's dental carrier.

BCBSM and MESSA also indicated that if the Petitioner requires surgery to the gum to pull the tooth into place, the oral surgery would be a payable medical benefit.

Commissioner's Review

The booklet language is clear: dental braces and appliances (e.g., retainers) are not covered. Dental services under the booklet are available to treat accidental injuries to sound natural teeth, but no information was provided to show that an accidental injury caused the Petitioner's problem. Therefore, his proposed orthodontic care is excluded from coverage and BCBSM is not required to pay for it.

The Commissioner concludes and finds that BCBSM's denied preauthorization of the Petitioner's proposed dental braces and retailers was correct

V
ORDER

BCBSM's final adverse determination of October 8, 2008, is upheld.

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.