

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. 104772-001

v

Blue Care Network of Michigan
Respondent

**Issued and entered
this 26th day of June 2009
by Ken Ross
Commissioner**

ORDER

**I
BACKGROUND**

On May 7, 2009, 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.* On May 14, 2009, after a preliminary review of the material submitted, the Commissioner accepted the request.

Blue Care Network of Michigan (BCN) was notified of the request for external review and furnished the documentation and information it considered in making its final adverse determination.

This case involves a medical issue. Therefore, the Commissioner assigned the matter to an independent review organization (IRO) and requested the opinion of a medical expert. On May 28, 2009, the IRO completed its review and sent its recommendation to the Commissioner.

FACTUAL BACKGROUND

The Petitioner is a member of BCN as an eligible dependent under her mother's group coverage. Her health care benefits are defined in the BCN 10 Certificate of Coverage (the certificate).

The Petitioner has been diagnosed with depression and an eating disorder. She sought treatment for her conditions at XXXXX in XXXXX, California, as an inpatient and in a partial hospitalization program (PHP). XXXXX is not part of BCN's network of providers.

BCN authorized inpatient treatment from December 23, 2008, to January 16, 2009, and then authorized a PHP from January 16 through January 27, 2009. BCN denied further PHP treatment after January 27, 2009.

The Petitioner appealed BCN's denial. At the conclusion of BCN's internal grievance process the Petitioner received BCN's final adverse determination letter dated March 6, 2009.

III ISSUE

Did BCN properly deny the Petitioner coverage for the PHP at an out-of-network facility beyond January 27, 2009?

IV ANALYSIS

Petitioner's Argument

While visiting her father in California, the Petitioner became acutely ill and required psychiatric hospitalization. She sought treatment at XXXXX. She received inpatient treatment until January 16, 2009, and was then stepped down to a PHP from January 16 through January 27, 2009. BCN denied coverage for the PHP beyond January 27, 2009.¹

¹ The record is not clear, but the Petitioner apparently stayed at XXXXX until mid-February 2009.

The Petitioner says she meets the American Psychiatric Association's clinical practice guidelines criteria for residential treatment / partial hospitalization and believes the PHP should be covered through February 23, 2009.

In a May 5, 2009, letter, the Petitioner's mother stated:

Her primary care provider and all of her health care professionals support [the Petitioner's] need for this level of care. Therefore although she has transitioned to an outpatient treatment team, at the time she required an intensive level of support from that team, including ongoing counseling to minimally meet her needs. I request that [OFIR] correct the records regarding [the Petitioner's] level of care to reflect her needs and support these needs with continued counseling services, since partial hospitalization/residential treatment is a benefit she has been eligible for and has required.

The Petitioner contends the PHP beyond January 27, 2009, was medically necessary to treat her condition and she wants BCN to cover it.

Respondent's Argument

In its March 6 2009, final adverse determination, BCN denied coverage saying:

Based on the medical documentation provided by the out of network facility, [the Petitioner] was ready for discharge and able to return to Michigan after January 27, 2009. Therefore, your request remains denied.

Earlier, in a February 11, 2009, letter, BCN told the Petitioner:

Our associate medical director, a MD, who is Board Certified in Psychiatry, reviewed the medical documentation provided by XXXXX, along with your benefits. After a thorough review, he concurred with the rationale and decision rendered previously. He found no additional evidence that would objectively support continued care qualifying as emergency care. [The Petitioner's] stay at the referenced facility is authorized until January 27, 2009. Therefore, your request for additional authorization remains denied.

In the general case notes, XXXXX, MD, BCN psychiatrist, reported on January 27, 2009:

This member was capable of travel to Michigan on 1-16-08 by the attending's own assessment at that time. All of the clinical information obtained since then is consistent with this assessment and also indicates that [t]he member has been capable of returning to Michigan through the intercurrent period of time. * * *

As regards medical necessity: it stands to reason that, given the member's recent history of rather longstanding suicidal thinking and eating disorder (Bulimia) symptoms, that a bit more partial (1 week more) may be in order. The issue here is a benefits issue, however.

My intention on 1-16-08 was to have denied this partial admission altogether. There seems to have been a miscommunication of this fact to the provider and formal denial communication related to partial never occurred. Because of this error we should authorize the partial admission through today [1-27-09], only. Out-of-network benefits exist only in cases where either the network cannot meet the member's needs. Coverage outside of the service area exists only for emergency situations. The member is no longer in an emergency situation and the network can meet her needs. For this reason, the request for continuing authorization in partial out-of-network in California IS DENIED.

BCN cited these provisions in the certificate:

2.01 Unauthorized and Out-of-Plan Services

Except for emergency care as specified in Section 1.05 of this booklet, health, medical and hospital services listed in this Certificate are covered only if they are:

- provided by a BCN-affiliated provider and
- preauthorized by BCN.

Any other services will not be paid for by BCN either to the provider or to the member.

1.05 Emergency Care

* * *

Emergency services are covered up to the point of stabilization when they are medically necessary and needed immediately to treat a condition that meets the definition of an emergency condition as described above or if the Primary Care Physician directs the patient to go to an emergency care facility.

It is BCN's position that the Petitioner's condition was such that after January 27, 2009, she was able to return to Michigan and receive care from a network provider. It believes its denial of the PHP at XXXXX beyond January 27, 2009, was appropriate.

Commissioner's Review

The Petitioner apparently required emergency psychiatric hospitalization while visiting in California. For this external review, BCN does not dispute the necessity or the level of care the Petitioner received up to January 27, 2009. However, BCN does assert that after January 27, 2009, it was no longer necessary for the Petitioner to be in a PHP at an out-of-network facility.

The certificate provides coverage for treatment from out-of-network providers in cases where there is a medical emergency but only up to the point of stabilization (see Section 1.05). After stabilization, care must be provided by a BCN-affiliated provider. Furthermore, Section 1.12 of the certificate says:

All mental health care services must be provided by BCN affiliated providers and be preauthorized and arranged through BCN **except** in an emergency.

In order to resolve the question of whether it was necessary for the Petitioner to continue in a PHP at XXXXX, the Commissioner obtained the recommendation of an independent review organization (IRO). The review was conducted by an actively practicing physician who is certified by the American Board of Psychiatry and Neurology with a subspecialty certification in psychiatry. The reviewer is also an assistant clinical professor of psychiatry at a university-based school of medicine, and is a member of the American Psychiatric Association. The IRO reviewer recommended upholding BCN's denial.

The IRO report said:

It is the determination of this reviewer that the Partial Hospitalization Program (PHP) at an Out of Network facility from January 27, 2009, forward is not medically necessary. It is medically necessary that the [Petitioner] continue a PHP program after January 27, 2009; however, the [Petitioner] was medically stable enough to travel and could have continued her care at an in-network facility.

According to The American Psychiatric Association (APA) Practice Guidelines for the Treatment of Psychiatric Disorders, Compendium 2006, pp. 1130-1133, "the presence of partial motivation, pre-occupation with intrusive, repetitive thoughts, and need for structure to gain weight and prevent compulsive exercising, warrants partial hospitalization."

As of January 27, 2009 the [Petitioner] was not stabilized and continued to restrict. She remained depressed, and had reported suicidal ideation, as of January 26, 2009. Poor internal motivation and obsessive / compulsive food-related rituals remained unresolved.

The [Petitioner's] Certificate of Coverage Section 1.12 Mental (Behavioral) Health Care states, "All mental health care services must be provided by BCN affiliated providers and be pre-authorized and arranged through BCN except in an emergency." As of January 27, 2009, the [Petitioner] was not in an emergent state and continued care should have been provided by BCN affiliated providers and facilities.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. The IRO's analysis is based on extensive expertise and professional judgment and the Commissioner can find no reason why the IRO's recommendation should be rejected.

The Commissioner accepts the conclusion of the IRO and finds that BCN's denial of the PHP at an out-of-network provider beyond January 27, 2009, was appropriate.

V ORDER

The Commissioner upholds BCN's March 6, 2009, final adverse determination. BCN is not required to cover the Petitioner's partial hospitalization program at an out-of-network facility beyond January 27, 2009.

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.