

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. 102851-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
This 10th day of July 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On February 5, 2009, XXXXX, on behalf of her 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 February 12, 2009.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's initial response on February 20, 2009. BCBSM provided additional information on February 24, 2009.

The Petitioner, born August 9, 1991, is an eligible dependent under his mother's health care coverage through the Michigan Education Special Services Association (MESSA). The plan is underwritten and administered by BCBSM. His benefits are defined in the MESSA Choices II Group Insurance for School Employees coverage booklet (the booklet).

The issue in this external review can be decided by a contractual analysis. 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

On November 11, 2008, the Petitioner's dentist submitted a preauthorization request for dental implants. On November 19, 2008, MESSA denied the request, saying the proposed treatment did not meet criteria for coverage.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on January 14, 2009, and issued a final adverse determination dated January 27, 2009.

III ISSUE

Is BCBSM required to provide coverage for the Petitioner's dental implants?

IV ANALYSIS

Petitioner's Argument

The Petitioner is congenitally missing front teeth # 7 and # 10 (lateral incisors). His family researched options to correct this problem and found that standard bridges ruin adjacent teeth. His dentist did not recommend a Maryland bridge because the metal from the bridge would show through the different angles between his teeth. The Petitioner was told his canine teeth could be pulled forward and then sanded down to try and mimic teeth #7 and #10. However, his orthodontist indicated that the Petitioner's canine teeth were so large and his skull is so large that he would be unhappy with his appearance and would also be missing teeth in the back of his mouth. The Petitioner contends his only solution is dental implants.

BCBSM covered a bone graft necessary to create jawbones for the requested implants but denied coverage for the implants themselves. The Petitioner argues that by paying for the jaw surgery BCBSM misled him to believe that it would cover all the medically necessary care to

replace his front teeth. The Petitioner believes that since the implants are medically necessary and the booklet covers medically necessary procedures that BCBSM is required to cover his dental implants.

BCBSM's Argument

BCBSM denied preauthorization for the Petitioner's dental implants, saying they are not covered under the booklet. BCBSM cites the following provision (page 48):

Section 10: Exclusion and Limitations

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 completed dentures, dental implants, extractions, extraction repairs, bite splints, braces and appliances and other dental work or treatment

In its November 19, 2008, denial of authorization BCBSM provided written notice that implants were not a covered benefit. It is BCBSM's position that it did not lead the Petitioner to believe that his dental implants were a covered benefit.

BCBSM determined, based on the contract, that dental implants are excluded from coverage, even if medically necessary.

Commissioner's Review

The Petitioner's MESSA coverage is primarily medical in nature. Under the terms of the booklet, dental care is only covered in very limited circumstances and the Commissioner concludes that the implants the Petitioner seeks are not covered dental care.

First, "Dental services" are defined in the booklet as

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. [Underlining added]

Thus, dental services are available for accidental injuries to sound natural teeth, which is not the case for the Petitioner.

Second, the booklet also covers, in “Section 7: Coverage for Physician and Other Professional Providers Services,” certain other dental services (page 36):

Dental Surgery

Dental Surgery is payable only for:

- multiple extractions or removal or unerupted teeth, alveoloplasty or gingivectomy performed in a hospital when the patient has an existing concurrent hazardous medical condition
- surgery on the jaw joint
- arthrocentesis performed for the reversible or irreversible treatment of jaw joint disorders

The Petitioner’s implants do not fall under any of these covered services either.

Finally, implants are specifically excluded in Section 10 of the booklet, quoted above. The Commissioner finds no exception in the booklet that would provide coverage for implants, even if the need arose from a congenital condition.

The Petitioner also argues that a treatment must be covered if it is medically necessary. However, medical necessity alone is not determinative of coverage. The needed care or service must also be covered under the terms of the health plan. In this case, the Commissioner finds no coverage for implants in the limited dental care services that are provided in the MESSA Choices II booklet.

The Petitioner also says he detrimentally relied on BCBSM’s decision to cover his bone graft in September 2008, that “this action clearly shows an acceptance of the claim for payment of the procedures required to correct the genetic defect and led [him] to believe the complete implant procedure would be covered.” The Petitioner says BCBSM’s actions led him and his doctors “to plan and coordinate the correct steps to finish the procedure.” However, under the Patient’s Right

to Independent Review Act, the Commissioner has no authority to apply doctrines such as detrimental reliance to resolve a case. The Commissioner's role here is limited to determining whether the requested service is a covered benefit under the terms of the booklet and state law and the Commissioner found that it was not. The courts of this state may consider the Petitioner's detrimental reliance argument.

The Commissioner understands the Petitioner's aspiration to have his appearance improved with the implants. He wants to be, as his mother says, a "17 year old who would like to look normal." Unfortunately, his health care coverage does not include dental implants.

The Commissioner concludes and finds that BCBSM's denial is consistent with the terms of the booklet.

**V
ORDER**

BCBSM's final adverse determination of January 27, 2008, is upheld. BCBSM is not required to preauthorize or cover the Petitioner's dental implants.

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.