

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
v

File No. 103882-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 22nd day of July 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On March 25, 2009, 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.* After an assessment of the material submitted, the Commissioner accepted the request for external review on April 1, 2009.

The Petitioner is a member of Blue Care Network of Michigan (BCN). The Commissioner notified Blue Care Network of Michigan (BCN) of the external review and requested the information used in making its adverse determination. The Office of Financial and Insurance Regulation received the information on April 8, 2009.

The case required analysis of medical issues. Consequently, pursuant to MCL 550.1911(6), the Commissioner assigned the matter to an independent review organization which completed its review and sent its recommendations to the Commissioner on May 15, 2009.

II FACTUAL BACKGROUND

In 1987 the Petitioner had left breast augmentation and right breast mastopexy to correct asymmetry. She says she currently experiences pain from the stitches left from her original right breast surgery and back pain from the large natural right breast. The asymmetry remains.

The Petitioner now seeks approval for surgery to remove and replace the left breast implant and reduction of the right breast to eliminate the back pain and achieve symmetry.

BCN denied coverage for the procedures and the Petitioner appealed. The Petitioner exhausted BCN's internal grievance process and received its final adverse determination letter dated March 13, 2009.

III ISSUE

Did BCN properly deny Petitioner coverage for the requested surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner says she is seeking surgery because the silicone implant placed in her left breast in 1987 has ruptured. She also says that there is a significant difference in the size of her breasts and because of this asymmetry she has been experiencing a lot of pain and discomfort. She explained to BCN in January 2009:

I...experience back pain due to my right large natural breast and my left large silicone breast. I need a reduction on my right and a smaller implant on my left. The two breast[s] are too large and completely uneven, the right breast is still significantly larger than my left. This causes me to slouch and causes back pain. I feel that the surgery I am requesting should be classified as a breast reduction and the stitches need to come out for obvious reasons.

She believes the requested surgery is a means of relieving the strain to her back.

The Petitioner's surgeon, XXXXX, MD, wrote in support of the surgery in a letter dated December 2, 2008:

On physical examination today [the Petitioner] has a very enlarged areola on the right side and a moderate degree of ptosis. She will need a small reduction and repeat mastopexy of the right breast with revision of the areolar scar and reduction in the diameter of the areola. The left side shows capsular contracture around the aged silicone gel breast implant. There is a marked contracture around this. I would suspect that given the generation of the implant that was used in 1987 that a 21 year old implant is most likely degenerated and is ruptured. There are no imaging studies documenting this, however, given the age of this it is extremely likely that this is the case. I would recommend that this implant be removed. She will need implant replacement, removal of implant material, capsulectomy and a left mastopexy in order to achieve symmetry. There are no photos documenting the [Petitioner's] condition, as she refused these in the office.

The Petitioner argues that BCN should approve coverage for her surgery because it is medically necessary to relieve her pain and not cosmetic. In her request for external review she also asked if BCN would consider paying for half the cost of these procedures.

BCN's Argument

In its final adverse determination, BCN denied coverage for surgery because "the service requested does not meet BCN's medical policy criteria."

BCN says that its medical policies "Reconstructive Breast Surgery / Management of Breast Implants" and "Breast Reduction (Reduction Mammoplasty)" apply in Petitioner's case.

The relevant portions of those policies are:

Reconstructive Breast Surgery / Management of Breast Implants

Inclusionary and Exclusionary Guidelines (Clinically based guidelines that may support individual consideration and pre-authorization decisions)

Inclusions

Established indications for breast reconstruction:

- Trauma to the breast(s)
- Mastectomy secondary to family or personal history of cancer of the breast
- Mastectomy due to current diagnosis of breast cancer
- Congenital defects, such as breast agenesis
- Developmental abnormalities, infection or following therapeutic surgery

Established procedures:

- Insertion of a breast implant (saline or silicone) for breast reconstruction is an established procedure following mastectomy or trauma.
- Removal of a silicone-gel-filled breast implant is an effective treatment in all cases for a documented silicone implant rupture, infection, extrusion, Baker Grade IV contracture or for the surgical treatment of breast cancer.
- Removal of a silicone gel or saline filled breast implant is an established procedure for all Baker Grade IV contractures regardless whether the initial surgery was reconstructive or cosmetic.
- The removal of a ruptured saline-filled breast implant may be considered established only in those patients who had originally undergone breast implantation for reconstructive purposes.
- The reinsertion of a silicone or saline breast implant(s) is considered cosmetic if the original insertion was for a cosmetic, not a reconstructive reason.

Exclusions

The following indications for breast implant removal are considered not medically necessary:

- Systemic symptoms, attributed to connective tissue diseases, autoimmune diseases, etc.
- Patient anxiety.
- Baker class III contractures in patients with implants for cosmetic purposes.
- Rupture of a saline implant in patient with implants for cosmetic purposes.
- Pain not related to contractures or rupture.

Breast Reduction (Reduction Mammoplasty)

Inclusionary and Exclusionary Guidelines (Clinically based guidelines that may support individual consideration and pre-authorization decisions)

Inclusions

Two or more of the following clinical indications and physical findings are present:

- Pain
 - Documented pain in the neck and/or shoulders or postural backache which must be for long-standing duration and increasing intensity; and
 - Failure of conservative therapy, including an appropriate support bra, exercises, heat/cold treatments and appropriate non-steroidal anti-inflammatory agents or muscle relaxants
- Ulceration of the skin of the shoulder or shoulder grooving not responding to conservative treatment

- Intertrigo between the breast and the chest wall that has not responded to dermatologic treatment
- Lordotic posture
- Ulnar paresthesia

In addition to the above clinical indications, both of the following criteria must also be met:

- The patient must be old enough so that the breasts are fully grown
- The amount of breast tissue removed from each breast must be equal to or greater than the 22nd percentile cutoff weight for body surface area...

BCN argues that the criteria shown above have not been met in the Petitioner's case.

Specifically, in its January 7, 2009, "Notification of unauthorized services", BCN said she did not meet the following criteria for removal of the left breast implant:

Removal of a silicone-gel-filled breast implant is an effective treatment in all cases for a documented silicone implant rupture, infection, extrusion, Baker Grade IV contracture or for the surgical treatment of breast cancer. There was no documentation submitted with an imaging study, such as mammography, MRI or ultrasonography to confirm rupture of implants.

BCN believes its denial is in compliance with its medical policies.

Commissioner's Review

The question of whether the Petitioner's requested surgery was medically necessary was presented to an independent review organization (IRO) for analysis and recommendation.

The IRO reviewer is an actively practicing physician certified by the American Board of Plastic Surgery; diplomate, American Board of Surgery; and a member of the American Society of Plastic and Reconstructive Surgeons and the American Society for Surgery of the Hand. After examining the records submitted, the IRO reviewer recommended that the BCN's denial be upheld.

Regarding the surgery to remove and replace the left breast implant, the IRO reviewer concluded that the medical necessity had not been established. The IRO report said:

The [Petitioner] does not meet the Medical Policy guidelines Reconstructive Breast Surgery / Management of Breast Implants. She does not have documented implant rupture, Baker IV contracture, recurrent infection, extruded implant or surgery for breast cancer. She

does have a Baker III contracture, but her original surgery was performed for cosmetic reasons (to treat breast asymmetry). Although the [Petitioner] is said to have Poland's syndrome, the documentation submitted for review does not include a computed tomography (CT) scan that confirms this diagnosis. Moreover, the [Petitioner] had a pectoralis muscle at the time of her breast augmentation.

* * *

[The Petitioner] had breast asymmetry for which she underwent a breast augmentation. Although she is said to have Poland's syndrome, the records do not provide any objective evidence for this diagnosis. The plastic surgeon's office note dated October 6, 2008, states that the [Petitioner] is "not happy with the results" of her prior surgery and feels that her breasts are too big. The note does not document any functional problems with the implant. In addition, the [Petitioner] does not have any objective evidence (e.g., mammogram, ultrasound, MRI) that her implant is ruptured. She is not suffering any health problems due to her implant, and the proposed surgeries are not required to treat a disease, illness or functional problem. They are cosmetic to improve the shape and size of her breasts.

The IRO reviewer also concluded that the Petitioner did not meet the criteria of the "Breast Reduction (Reduction Mammoplasty)" policy for the right breast reduction:

The Medical Policy Breast Reduction (Reduction Mammoplasty) states in part:

"Inclusions

Two or more of the following clinical indications and physical findings are present:

- Pain -- documented pain in the neck...failure of conservative therapy...
- Ulceration of the skin...
- Intertrigo between the breasts
- Lordotic posture
- Ulnar paresthesia"

In the [Petitioner's] letter dated 01/12/09, she complains of pain, but this information is not documented in the physician office notes. Other clinical indications noted above are not present in the physician office notes either. The plastic surgery note dated 10/6/08 indicates that the [Petitioner] is not happy with the results of surgery and feels her breasts are too big. The note does not describe any complaints of pain. Moreover, the records do not document a need for analgesics to treat breast pain. Dr. XXXXX's preoperative letter dated 12/2/08 does not mention pain as a symptom. If the [Petitioner] truly had severe pain, it would be expected that this information would be documented in the physician notes. It appears the surgeon was not planning a breast reduction; rather, he was planning a revision mastopexy and an implant exchange.

The [Petitioner] does not meet the Breast Reduction (Reduction Mammoplasty Criteria).

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's recommendation is afforded some deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case.

Therefore, the Commissioner accepts the recommendation of the IRO reviewer and finds that medical necessity has not been established for either the left breast implant removal or the right breast reduction.

**V
ORDER**

Respondent BCN's March 13, 2009, final adverse determination 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.