

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. 118132-001

v

Blue Care Network of Michigan
Respondent

Issued and entered
this 4th day of January 2011
by Ken Ross
Commissioner

ORDER

I
BACKGROUND

On November 17, 2010, 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 November 24, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request.

The Commissioner notified Blue Care Network of Michigan (BCN) of the request for external review and on November 17, 2010, BCN furnished the documentation and information it considered in making its final adverse determination.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on December 9, 2010.

II
FACTUAL BACKGROUND

Effective July 1, 2010, Petitioner became a member of BCN Advantage. She also has prescription drug coverage under the XXXXX Medical Benefit Trust.

The Petitioner is a 65 year-old female who has a history of gastroesophageal reflux disease (GERD) which has been treated unsuccessfully with Nexium, Zantac and Prilosec. She also has cancer of the palate and trachea. Her physician recommended treatment with AcipHex, a proton pump inhibitor. BCN denied coverage for AcipHex asserting that Petitioner did not meet its criteria for proton pump inhibitors.

Petitioner appealed BCN's denial. Petitioner received BCN's final adverse determination letter dated October 18, 2010.

III ISSUE

Did BCN properly deny the Petitioner coverage for AcipHex?

IV ANALYSIS

Petitioner's Argument

In her request for external review, Petitioner indicates that she has been using AcipHex for more than 15 years to control her GERD. She also notes that she tried over-the-counter products on two occasions but they were not successful in treating her symptoms. Petitioner argues that BCN should provide coverage for AcipHex.

Respondent's Argument

In its October 18, 2010, final adverse determination, BCN denied coverage for the requested medication stating:

The Panel determined that you do not meet the criteria to obtain coverage for a proton pump inhibitor, as stated in the enclosed . . . prescription drug rider.

The drug rider includes these provisions:

A. DEFINITIONS

* * *

7. COVERED DRUGS means a Generic Drug, Brand Name Prescription Drug, a Compounded Medication, or a Health Habit Prescription Drug that is prescribed by a BCN Affiliated Provider and is not excluded under Section E of this Rider. The Covered Drug is either:

- a) obtained through a Participating Pharmacy, or
- b) obtained from a Non-Participating Pharmacy in an urgent or out of area situation (section D2). This definition may be expanded at the discretion of BCN to include an Over-The-Counter (OTC) medication, a disposable medical supply or a device which meets all other requirements of this Section.

* * *

10. NON-FORMULARY prescription drug means prescription drugs not included in the BCN FORMULARY.

* * *

D. LIMITATIONS

* * *

3. Included in the BCN Formulary are Covered Drugs that are benefits under this Rider only if a BCN Affiliated Provider certifies to BCN and BCN agrees that the Covered Drug in question is medically necessary in that particular situation when compared to similar therapeutic alternatives. Those Covered Drugs are not payable by BCN without preauthorization by BCN.

* * *

E. EXCLUSIONS

* * *

8. There is no coverage for Prescription Drugs for which there is an Over the Counter equivalent in both strength and dosage form.

BCN argues that its decision to deny coverage for AcipHex is in compliance with the terms of Petitioner's drug rider.

Commissioner's Review

Generally, the Petitioner has coverage only for prescription drugs that are on BCN's formulary. However, Section 3406o of the Michigan Insurance Code (MCL 500.3406o) applies to both insurers and HMOs and provides:

An insurer that delivers, issues for delivery, or renews in this state an expense-incurred hospital, medical, or surgical policy or certificate that provides coverage for prescription drugs and limits those benefits to drugs included in a formulary shall do all of the following:

* * *

(c) Provide for exceptions from the formulary limitation when a non-formulary alternative is a medically necessary and appropriate alternative. This subdivision does not prevent an insurer from establishing prior authorization requirements or another process for consideration of coverage or higher cost-sharing for non-formulary alternatives. . . .

To help the Commissioner resolve the issue of whether AcipHex is a medically necessary and appropriate alternative, the matter was assigned to an independent review organization (IRO) for the recommendation of an expert. The IRO review was conducted by a physician who is board certified by the American Board of Family Practice with a subspecialty in Acute Care and Urgent Care; is a member of the American Academy of Family Physicians; and is in active clinical practice. The IRO reviewer determined that AcipHex is not medically necessary for the treatment of Petitioner's condition. The IRO reviewer explained:

There are multiple proton pump inhibitor medications that are available to treat esophageal reflux. These medications are far more similar than dissimilar, and are for all practical purposes, nearly identical. Generic proton pump inhibitors, which cost less, should also function as well as AcipHex.

After reviewing the excerpt of The Insurance Code of 1956 submitted along with the documentation for this case, this reviewer believes the [Petitioner] meets the criteria of the insurance code. Specifically, [Petitioner] reportedly has esophageal reflux which is an indication for use of proton pump inhibitor medicines. The [Petitioner] has a malignancy which is life-threatening. The condition of her palate could be worsened if indeed she has chronic acid reflux. The use of proton pump inhibitors for reflux is NOT off label usage.

* * *

There is no evidence that there is any substantial difference between various proton pump inhibitors in terms of healing. . . . [T]he [Petitioner's] physician indicated that there was some contraindication or concern about using Prilosec (omeprazole) in the setting of warfarin. Reviewer checked three (3) online separate drug interaction software programs. There was no significant difference in favor of the benefit of AcipHex in terms of the safety profile with respect to its use with warfarin relative to other proton pump inhibitors.

* * *

Any proton pump inhibitor should suffice for treatment of [Petitioner's] esophageal reflux.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the recommendation is afforded 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 experience,

expertise and professional judgment. The Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case. Therefore, the Commissioner accepts the conclusion of the IRO and finds that AcipHex is not medically necessary for the treatment of Petitioner's condition.

In the present case, the Commissioner notes that BCN's formulary lists several drugs as "formulary preferred" drugs for GERD. AcipHex is listed in the formulary as one identified as "nonformulary." The Commissioner's IRO reviewer concluded that AcipHex is not medically necessary for Petitioner and that similar brands on the corresponding formulary list are medically appropriate for her condition.

The Commissioner therefore finds that BCN is not required to provide coverage for AcipHex.

V
ORDER

The Commissioner upholds BCN's October 18, 2010, final adverse determination. BCN is not required to provide coverage for AcipHex.

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.