

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. 111988-001

v

Aetna Life Insurance Company
Respondent

Issued and entered
this 5th day of January 2011
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 25, 2010, XXXXX, on behalf of his infant daughter, 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 information that was received from both parties and accepted the request on June 2, 2010.

This matter does not require a medical opinion from an independent review organization. The Commissioner conducts non-medical external reviews pursuant to MCL 550.1911(7).

II
FACTUAL BACKGROUND

The Spees family receives health benefits under Aetna Life Insurance Company's (Aetna) *MI Open Choice PPO 3-07* certificate of coverage. On September 29, 2009, XXXXX gave birth to her daughter XXXXX through a normal vaginal delivery at XXXXX Hospital in XXXXX. Mother and daughter were released from the hospital together on October 1, 2009.

Aetna's explanation of benefits for XXXXX's maternity care showed the following charges

(net of provider discount):

XXXXX (mother)

September 28 – October 1

| | |
|-----------------------------|-----------------|
| Room & Board (semi-private) | \$1,934.40 |
| Hospital incidentals | <u>3,647.98</u> |
| TOTAL | \$5,582.38 |

XXXXX (child)

September 29 – October 1

| | |
|----------------------|---------------|
| Room & Board | \$718.40 |
| Hospital incidentals | 328.30 |
| Examinations | <u>208.23</u> |
| TOTAL | \$1,254.93 |

XXXXX had apparently met her deductible requirement before she entered the hospital on September 28 because Aetna paid the full \$5,582.38 of her charges. In XXXXX's case, Aetna assessed her a separate deductible beginning at her birth and, as a result, paid only \$258.93 of her charges.

Petitioner's father appealed Aetna's application of a separate deductible for XXXXX. After exhausting Aetna's internal grievance process, Petitioner received Aetna's final adverse determination dated March 26, 2010, upholding its original determination.

**III
ISSUE**

Did Aetna correctly apply separate deductibles to both mother and daughter in connection with the maternity care provided from September 28 to October 1, 2009?

**IV
ANALYSIS**

Petitioner's Argument

Mr. XXXXX says that in May 2009, in preparation for his wife's delivery, he contacted his human resources department and was told that the baby's deductible would begin after the baby left the hospital with the mother. He says he made this call because he could not find the information he needed in the Summary of Benefits. He says that his wife contacted Aetna customer service to determine what their out of pocket costs would be for hospital maternity services. She

says an Aetna customer service representative told her that charges for giving birth to Petitioner would fulfill her deductible as long as the baby left the hospital at the same time as the mother.

The XXXXXs request that Aetna eliminate the deductible charge applied to XXXXX and provide full benefit coverage for the maternity care.

Respondent's Argument

Quoted below is the pertinent portion of Aetna's March 26, 2010, final adverse determination:

Our decision

[W]e are upholding the previous decision to apply your plan's deductible towards the newborn facility charge your daughter XXXXX incurred from September 29, 2009 to October 1, 2009 at XXXXX Hospital.

How we made our decision

- In your appeal you stated you wanted to know what the medical costs to you and your wife would be for the delivery of your child. You contacted Aetna on May 26, 2006 [sic] to verify what your total out of pocket would be. You state that you were advised by the Aetna representative that the deductible would only apply to your wife not your newborn child. You were advised that if your newborn left the hospital the same time your wife did then your newborn would not have a deductible. This was also confirmed by your HR representative. You feel that you and your wife were misled regarding this deductible and you are requesting that Aetna waive the deductible on your newborn XXXXX for the services of September 29, 2009 to October 1, 2009.
- According to the Summary of Coverage under Calendar Year Deductible; this is the amount of Covered Medical Expenses you pay each calendar year before benefits are paid. There is a Calendar Year Deductible that applies to each person.
- A review of the claim indicates the charges were correctly applied to the plan's applicable deductible.
- Please be advised that benefits quoted via telephone calls are not a guarantee of benefits. Decisions are based upon the information provided in your benefit book and actual payment is contingent on the benefits available through the applicable plan, Aetna's Reimbursement Policies, and the member's eligibility on the date that services are rendered.

Aetna contends its benefit determination for Petitioner's claim was in compliance with their policy.

Commissioner's Review

The certificate of coverage describes how claims are paid. Maternity benefits are described on pages 11 and 12 of the certificate's Summary of Coverage:

Pregnancy Coverage

Benefits are payable for pregnancy-related expenses of female employees and dependents on the same basis as for a disease.

In the event of an inpatient confinement:

- Such benefits will be payable for inpatient care of the covered person and any newborn child for: a minimum of 48 hours following vaginal delivery; and a minimum of 96 hours following a cesarean delivery. If, after consultation with the attending physician, a person is discharged earlier, benefits will be payable for 2 post-delivery home visits by a health care provider.
- Certification of the first 48 hours of such confinement following a vaginal delivery or the first 96 hours of such confinement following a cesarean delivery is not required. Any day of confinement in excess of such limits must be certified. You, your physician, or other health care provider may obtain such certification by calling the number shown on your ID card.

The certificate does not specify how deductibles are to be charged for maternity care. In this case, Aetna charged separate deductibles for mother and child.

Bulletins issued by this agency in 1986 and 1990 (Bulletins 1986-8 and 1990-5) have interpreted the Insurance Code to require that insurers must provide coverage for medical and hospital charges for healthy newborn infants incurred while the mother is hospitalized for delivery. The coverage provided to the infant must be equal to the coverage provided to the mother. However, there is no provision in the Insurance Code that would prohibit an insurer from charging separate deductibles for mother and infant.

The Commissioner notes the Petitioners' arguments that they were misled by Aetna as to their maternity care, including deductibles. Aetna has presented a somewhat different version of what Petitioners were told. The Commissioner cannot resolve the factual dispute about whether or not Aetna misinformed the Petitioners about their maternity coverage. Under the Patient's Right to Independent Review Act, the Commissioner's role is limited to determining whether an insurer

properly administered health care benefits under the terms and conditions of the applicable insurance certificate and under state law. Resolution of factual disputes such as the one described by the Petitioner cannot be part of a PRIRA review because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements.

The Commissioner finds that Aetna's assessment of a separate deductible for mother and newborn was permissible under Michigan law and the insurance policy.

V
ORDER

Aetna's March 26, 2010, 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.