

**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. 111103-001

Blue Care Network of Michigan  
Respondent

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Issued and entered  
this 31<sup>st</sup> day of January 2011  
by Ken Ross  
Commissioner

**ORDER**

**I**  
**BACKGROUND**

On April 1, 2010, 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.*

Blue Care Network of Michigan (BCN) was notified of the request and on April 5, 2010, furnished the information used in making its final adverse determination. On April 7, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request.

This case involves medical issues so the Commissioner assigned it to an independent review organization which submitted its recommendation on April 21, 2010.

**II**  
**FACTUAL BACKGROUND**

The Petitioner was born November 17, 2005. His health care benefits are defined in the BCN 10 certificate of coverage (the certificate).

At age two, the Petitioner was diagnosed with ankyloglossia, a defect characterized by limited mobility of the tongue due to shortness of its frenulum (also called tongue tie).

On October 28, 2008, a frenulectomy was performed to correct the problem. After the surgery the Petitioner began to speak but still was lagging in speech skills. His mother requested speech therapy from BCN. XXXXX Healthcare Services (XXXXX), BCN's therapy vendor, issued a letter on June 25, 2009, denying authorization for the therapy.

The Petitioner appealed the denial through BCN's internal grievance process and received a final adverse determination letter dated February 11, 2010.

### **III ISSUE**

Did BCN properly deny the Petitioner coverage for speech therapy under the terms of the certificate?

### **IV ANALYSIS**

#### **Petitioner's Argument**

Following his frenulectomy, the Petitioner's speech accelerated but his mother decided to pursue speech therapy. A speech language evaluation performed by XXXXX Hospital on June 23, 2009, listed the Petitioner's conditions as "developmental apraxia syndrome" and "severe expressive language delay." The Petitioner enrolled in a summer speech program at XXXXX beginning July 2009.

A second speech language evaluation was performed at XXXXX Hospital on August 26, 2009. That evaluation summary and recommendation said:

A. [The Petitioner] presents with a severe articulation and phonological disorder characterized by phonemic substitution and the use of phonological processes and an expressive language disorder characterized by his inability to combine three-or-four words or produce basic sentences. Though [the Petitioner's] receptive language skills are emerging, [his] difficulty with answering questions significantly impacts his ability to communicate.

P: Speech treatment is recommended two times per week for four weeks. ...

After speech therapy was denied, the Petitioner's mother appealed to BCN. In a January 14, 2010, letter to BCN, she explained that the evaluation at XXXXX Hospital presented a more accurate description of the Petitioner's condition that justified the speech therapy:

8-26-09 (Age: 3 hr, 9 mo) – We took [the Petitioner] for a second evaluation to XXXXX Hospital at the recommendation of our pediatrician.... [The Petitioner] was seen by Speech and Language Pathologist...who evaluated [Petitioner] for 50 minutes where she diagnosed him as having an Articulation Disorder ICD-315.39. ... [Her] overall evaluation of [the Petitioner] is that he presents a severe articulation and phonological disorder characterized by phonemic substitution and the use of phonological processes and an expressive language disorder characterized by his inability to combine three-to-four words or produce basic sentences.

Unfortunately, the delay he is experiencing is due from his Ankyloglossia ("Tongue tied") that was surgically corrected in October of 2008. While surgery corrected the initial problem it did not correct the issue he experienced by not being able to communicate properly. He missed out on the most important learning timeframe when letters form into words. Words and letters that heavily use the tongue are slurred and he will often skip those letters – T, S, L, W, etc. While he has come a long way, he is still very behind in his pronunciation and annunciation. He's going to need therapy to get his vocabulary to where it should be for a typical 4 year-old child. We fear he won't be able to start Kindergarten as planned without this help...delaying his development further.

The Petitioner's mother also pointed out what she believes were inaccuracies in the XXXXX Hospital report:

According to the letter from Blue Care Network dated July 29, 2009 your denial is based on the diagnosis of Apraxia and that [Petitioner's] speech was only a moderate delay. We strongly feel that this was a gross misjudge of [his] actual condition given the mistakes that were supplied by XXXXX. This is the reason we sought out a 2<sup>nd</sup> opinion at XXXXX Hospital.

The Petitioner's mother contends that additional speech therapy is necessary to treat the Petitioner's condition and she wants BCN to provide coverage.

#### Respondent's Argument

In its initial denial dated June 25, 2009, XXXXX said:

Speech therapy is rehabilitative therapy professionally administered by a certified or licensed speech therapist to correct speech impairment or communication disorders resulting from disease, trauma, congenital anomaly or previous therapeutic processes. Speech therapy is not covered for chronic conditions or mild and moderate developmental speech and language disorders. In addition, verbal apraxia or stuttering/stammering is not covered unless due to a specific disease or brain injury. The insured has not met the requirements of the medical plan to qualify for speech therapy services. Therefore, speech therapy is denied. [Underlining added]

BCN affirmed that denial in its February 1, 2010, final adverse determination:

The [grievance] Panel determined that the speech therapy for [the Petitioner] is considered a chronic/congenital medical condition and therefore, not covered under his Certificate.

BCN based its denial on this provision in the certificate:

#### **1.14 Outpatient Rehabilitation**

Outpatient rehabilitation includes:

- Medical rehabilitation
- Physical therapy
- Occupational therapy
- Speech therapy

Short-term outpatient medical rehabilitation and physical, occupational and speech therapy are covered when they are medically necessary for a condition that can be expected to improve significantly within 60 consecutive days. These services must be preauthorized by our Primary Care Physician and BCN.

\* \* \*

**Limitation:** One period of treatment for any combination of therapies within 60 consecutive days is covered per medical episode.

\* \* \*

#### **Speech Therapy Exclusions Include:**

- chronic conditions or congenital speech abnormalities
- learning disabilities
- deviant swallow or tongue thrust
- mild and moderate developmental speech or language disorders

- vocal cord abuse resulting from life-style activities

BCN's medical policy title "Speech/Swallowing Therapy" also says that speech therapy is excluded for "chronic conditions or congenital speech abnormalities."

BCN argues that the Petitioner's need for speech therapy arose from a chronic or congenital condition and therefore it was not eligible for coverage.

#### Commissioner's Review

The certificate covers speech therapy when it is medically necessary and meets the criteria of the certificate. BCN believes its denial was correct because the certificate excludes coverage for speech therapy for "chronic conditions or congenital speech abnormalities."

To answer the question of whether the Petitioner's speech therapy was needed because of a chronic condition or congenital abnormality, the matter was referred by the Commissioner to an independent medical review organization (IRO) for review and recommendation pursuant to Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO review was conducted by a physician who is certified by the American Board of Family Medicine and is in active practice. The IRO reviewer recommended upholding BCN's denial of coverage for speech therapy.

The IRO report explained:

[The Petitioner] has an expressive language delay. A diagnosis of speech delay may also be possible and more correct; however, this was not mentioned in the records. In evaluating this case, the generally accepted standard of care in the community...determines that speech therapy is medically necessary for this child. Given the clinical scenario, speech therapy is required in order to allow this patient to achieve his maximum ability in mastering the articulation of spoken language.

\* \* \*

Based on the [Petitioner's] contract limitations, the denial must be upheld. This child is in need of speech therapy to correct his expressive language delay. The problem is congenital and not chronic. There is no documentation demonstrating neurological etiology to this problem. The source of the enrollee's speech delay is Ankyloglossia which is a congenital defect. Even though the proposed therapy is medically necessary, the enrollee's certificate of coverage specifically excludes coverage for speech therapy for chronic/congenital conditions. [Underlining added]

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

The Commissioner therefore accepts the conclusion of the IRO that the speech therapy was for a congenital condition and finds that BCN's denial was therefore appropriate under the terms of the certificate.

**V  
ORDER**

The Commissioner upholds BCN's February 1, 2010, final adverse determination. BCN is not required to cover the Petitioner's speech therapy.

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.