

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. 118690-

001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 11th day of February 2011
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 27, 2010, XXXXX, authorized representative of his adult 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 January 5, 2011.

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 response on January 11, 2011.

The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate). Because medical issues were involved, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on January 11, 2011.

II
FACTUAL BACKGROUND

The Petitioner was admitted on June 28, 2010 to XXXXX, an XXXXX inpatient substance abuse treatment facility where Petitioner had been treated previously. Petitioner's treatment plan listed his expected date of discharge as July 30, 2010. BCBSM approved coverage for inpatient treatment through July 5, 2010. However, Petitioner remained in treatment at the inpatient level through July 10, 2010. On that date, apparently against medical advice, he left XXXXX.

BCBSM denied coverage for five days of inpatient care beyond July 5, 2010, asserting that inpatient treatment was not medically necessary after that date.

The Petitioner's parents appealed BCBSM's denial through its internal grievance process. BCBSM held a managerial-level conference and issued a final adverse determination on December 16, 2010, upholding its denial.

III ISSUE

Did BCBSM correctly deny coverage for the Petitioner's inpatient substance care provided from July 6 to July 10, 2010?

IV ANALYSIS

Petitioner's Argument

The Petitioner's father says his son has a very serious drug addiction. BCBSM approved and paid for his first inpatient stay at XXXXX which lasted over 30 days. Upon discharge, he returned to complete high school. He knew he had to maintain his presence in the recovery community so he attended Narcotics Anonymous meetings. However, he began missing meetings and canceling appointments with his doctors. On June 17, 2010, he overdosed on heroin. Since he had violated the terms of his probation, the judge gave him the choices of going to jail or going back to XXXXX. He chose to go back to XXXXX.

BCBSM authorized inpatient care at XXXXX from June 28 through July 5, 2010 but denied additional days of inpatient care beyond this date indicating care could have been provided at the outpatient level. Petitioner's father says he does not know how BCBSM could determine that such

a short stay could fix his son's problem.

The Petitioner's father argues that the prior care at the outpatient level has not been successful so the inpatient care provided by XXXXX from July 6 to July 10, 2010 was medically necessary and should be a covered benefit. Therefore, he believes BCBSM is required to provide coverage for this care.

BCBSM's Argument

It is BCBSM's position that the Petitioner's stay at XXXXX from July 6 to July 10, 2010, was not medically necessary under the terms of his certificate of coverage, and was, therefore, not a covered benefit.

The certificate, in Section 3: Coverage for Hospital, Facility and Alternatives to Hospital Care has this provision:

- For covered services to be payable, they must be medically necessary.
Note: Medically necessary services that can be provided safely in an outpatient or office location are not payable when provided in an inpatient setting.

BCBSM conducted several reviews of the Petitioner's medical records. Two reviews were conducted by outside medical review entities. One review was conducted by Magellan Behavioral Health of Michigan, the administrator of BCBSM's mental health programs. A second review was conducted by XXXXX of XXXXX. Both reviews concluded that Petitioner's inpatient care after July 5, 2010 was not medically necessary since he could have been treated in a less intensive setting as signs and symptoms he exhibited did not satisfy the criteria established to have the admission covered under the certificate.

BCBSM submits that the denial of coverage for the Petitioner's admission at XXXXX from July 6 to July 10, 2010 was correct.

Commissioner's Review

The question of whether the Petitioner's inpatient substance abuse treatment from July 6 to July 10, 2010 was medically necessary was presented to an independent review organization (IRO)

for analysis as required by Section 11(6) of Patient's Right to Independent Review Act. The IRO reviewer is certified by the American Board of Psychiatry and Neurology, is a clinical assistant professor at a university-based school of medicine's department of psychiatry, is licensed in the state of Illinois, and is in active clinical practice.

The IRO physician reviewer concluded that the residential level of care for substance abuse for the dates July 6 through July 10, 2010, were not medically necessary for the treatment of the [Petitioner's] condition.

The reviewer's report stated in part:

The enrollee appeared to be externally motivated. He had a history of serious consequences to his use but the record does not contain sufficient information to ascertain that he was showing imminent danger to self or others related either directly to the substance use or psychiatric sequelae. He had not used for a week prior to admission and there is no evidence that intensification of services was considered prior to his returning to XXXXX.

American Psychiatric Association (APA) practice guidelines indicate that patients should be treated in the least restrictive setting which will be safe and effective. The efficacy of residential treatment was questionable given the [Petitioner's] poor motivation and lack of satisfactory response to previous treatment at this level and the record does not establish that he could not have been safely managed in an alternative setting of lower intensity.

The enrollee failed to meet dimensions 3, 4 and 6 in regards to American Society of Addiction Medicine (ASAM) placement criteria for residential treatment. During the dates of services under review he did not show behavioral complications which required containment on a 24 hour basis. While he did show limited readiness to change, there was no indication that he presented an imminent danger to self from continued substance abuse. Dimension 6 was not met as the enrollee did have sober supports and appropriate social contacts.

In the reviewer's opinion the standard of care for the enrollee's condition would be a halfway house with adjunctive substance abuse counseling and psychiatric services. The documentation fails to establish that the enrollee could not have been safely and just as effectively managed in a less intensive setting.

While the Commissioner is not required in all instances to accept the IRO's recommendation, it is afforded deference. 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 reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The Commissioner notes the argument of Petitioner's father that BCBSM's decision is a violation of federal requirements for mental health treatment. However, no insurer is required to provide treatment which is not medically necessary, regardless of any federal requirement that mental health disorders be covered in the same manner as physical illness. The medical review upon which this Order is based concluded that the inpatient treatment in question was not medically necessary. The Commissioner accepts the conclusion of the IRO and finds that BCBSM's denial of coverage is consistent with the terms of the certificate and should be upheld.

**V
ORDER**

BCBSM's final adverse determination of December 16, 2010, is upheld. BCBSM is not responsible for covering for the Petitioner's care at XXXXX from July 6 to July 10, 2010.

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.

Ken Ross
Commissioner