

**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. 114548-

001

v

Blue Cross Blue Shield of Michigan  
Respondent

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

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On August 2, 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.* The Commissioner reviewed the request and accepted it on August 9, 2010.

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 August 18, 2010.

The Petitioner has health care coverage through the Michigan Education Special Services Association (MESSA). The plan is underwritten and administered by BCBSM. The issue in this external review can be decided by a contractual analysis. The Petitioner's health care benefits are defined in the MESSA *Choices II Group Insurance for School Employees* coverage booklet (the booklet). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter

does not require a medical opinion from an independent review organization.

## **II FACTUAL BACKGROUND**

The Petitioner sought treatment for many years for endometriosis and chronic pelvic pain. Her pain continued following a hysterectomy. She consulted with XXXXX, MD, in New York, who determined that she had advanced endometriosis. Because Dr. XXXXX does not participate with BCBSM or the local BCBS plan in New York he is not a panel provider under the Petitioner's plan.

On February 11, 2010, the Petitioner underwent an excision laparoscopy (procedure code 58622) recommended and performed by Dr. XXXXX. Dr. XXXXX charged \$19,500.00 for this procedure. BCBSM initially paid the Petitioner its approved amount of \$912.00 for the procedure and then paid an additional \$228.00 for a total of \$1,140.00. This left the Petitioner responsible for a balance of \$18,360.00.

The Petitioner appealed BCBSM's reimbursement amount. BCBSM held a managerial-level conference on June 9, 2010, and issued a final adverse determination dated June 16, 2010.

## **III ISSUE**

Is BCBSM required to pay an additional amount for the Petitioner's surgery under the terms of the booklet?

## **IV ANALYSIS**

### Petitioner's Argument

After her hysterectomy, the Petitioner continued to suffer from chronic pain in her lower abdomen which increased in intensity. After many procedures, including surgery and pain management from medical professionals, she had no relief and no insight into her problem. Finally, she was given Dr. XXXXX's name and made an appointment to see him.

Based on a blood test that indicated endometriosis, the doctor agreed to do surgery. He found that the Petitioner's left fallopian tube had been left behind along with five attached

uncrimped staples. He removed the endometriosis, fallopian tube, and staples and her condition greatly improved.

The Petitioner says that her decision to seek treatment from Dr. XXXXX has actually saved BCBSM "from having to pay additional claims to try to fix me." She wants to be reimbursed for the total amount charged for her February 11, 2010, surgery.

#### BCBSM's Argument

In its June 16, 2010, final adverse determination, BCBSM denied additional reimbursement, saying that it had paid the maximum benefit available for the Petitioner's surgery. BCBSM's approved amount for procedure code 58662 is \$912.00. However, the MESSA medical director reviewed the Petitioner's medical records and allowed an additional payment of 25% of the approved amount (\$228.00) for a total of \$1,140.00. Even though the Petitioner's plan requires a nonpanel deductible and copayment, neither was applied to the claims from Dr. XXXXX.

BCBSM also noted that while the Petitioner was advised to get a referral, this does not guarantee that BCBSM (or MESSA) will pay the provider's charges in full. Section 12 of the booklet notes that nonparticipating providers do not have a contract with BCBSM and their covered services are covered only up to the BCBSM approved amount. The member is responsible for any amount of the charge that exceeds BCBSM's approved amount.

BCBSM says that it used a resource based relative value screen scale (RBRVS) to determine the payment level for Dr. XXXXX's surgery. The RBRVS is a nationally recognized reimbursement structure developed by and for physicians. It reflects the resources required to perform each service, including physician time, specialty training, malpractice premiums, and practice overhead. BCBSM regularly reviews the ranking of procedures to address the effects of changing technology, training and medical practice.

BCBSM maintains that the amount it paid for Dr. XXXXX's surgery was appropriate and correct under the terms of the booklet.

#### Commissioner's Review

BCBSM's contracts do not guarantee that a provider's charge will be paid in full. Rather, BCBSM's "approved amount" for a service is based on the lesser of the provider's charge or BCBSM's maximum payment level for that service. Participating and panel providers have agreed to accept BCBSM's approved amount as payment in full for a covered service. Unfortunately for the Petitioner, Dr. XXXXX had no such agreement with BCBSM.

The booklet explains that BCBSM's approved amount for each covered service is used as the basis for paying claims from all providers. There is nothing in the certificate that requires BCBSM to pay more than its approved amount, even in an emergency or even if there are no panel or participating providers available. The certificate also does not require BCBSM to pay a nonparticipating provider's charge in full under any circumstances. The certificate (page 56) has this provision regarding nonparticipating providers:

If your provider does not agree to participate, covered services will be paid up to the approved amount as determined by MESSA [BCBSM]. You will be responsible for any required deductible or copayment and any amount exceeding MESSA's payment determination.

Thus, the Petitioner may be responsible for the balance of the surgeon's fee above BCBSM's approved amount.

BCBSM and MESSA determined that the approved amount for the Petitioner's surgery was \$1,140.00. This is 25% more than it normally pays for this procedure. If Dr. XXXXX had been a BCBSM participating provider, he would have accepted the approved amount as payment in full. BCBSM is not required under the terms of the Petitioner's coverage to pay any additional amount for her care.

The Commissioner finds that the Petitioner's claims in this case were processed correctly according to the terms and conditions of the MESSA *Choices II Group Insurance for School Employees* booklet.

**V  
ORDER**

BCBSM's final adverse determination of June 16, 2010, is upheld. BCBSM is not required

to pay an additional amount for the Petitioner's surgery.

This is a final decision of an administrative agency. Any person aggrieved by this Order may seek judicial review no later than 60 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. See MCL 550.1915(1), made applicable by MCL 550.1952(2). 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.

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Ken Ross  
Commissioner