

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. 117890-001

v

Blue Care Network of Michigan
Respondent

Issued and entered
this 25th day of March 2011
by Ken Ross
Commissioner

ORDER

I
BACKGROUND

On November 4, 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.* On November 12, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request.

The Commissioner notified Blue Care Network (BCN) of the external review and requested the information used in making its adverse determination. The Commissioner received BCN's response on November 5, 2010.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on November 6, 2010.

II
FACTUAL BACKGROUND

The Petitioner is a member of BCN, a health maintenance organization. His health care benefits are defined in the *BCN 10 General Provisions and Schedule of Benefits* (the certificate) and the *1040 DC Prescription Drug Rider*.

Petitioner has a history of attention deficit disorder (ADD). His doctor prescribed Strattera for treatment of his condition and requested prior authorization. BCN denied authorization. Petitioner appealed BCN's denial of coverage through its internal grievance process. BCN maintained its denial and issued a final adverse determination dated October 29, 2010.

III ISSUE

Did BCN properly deny the Petitioner coverage for Strattera?

IV ANALYSIS

Petitioner's Argument

In her request for external review, Petitioner's mother indicated that Petitioner had a positive response to Strattera. She says they were told that Petitioner had to try and fail an amphetamine, such as Adderall, before coverage for Strattera could be provided. They tried amphetamine XT (generic Adderall) but it made Petitioner feel terrible and his school work suffered as much as he did. She says by not getting the medication that is effective it has caused more office visits and time attempting to help her son.

Respondent's Argument

In its October 29, 2010, final adverse determination, BCN denied coverage for Straterra stating:

The request was denied because the records submitted do not indicate that [Petitioner] has experienced treatment failure of or intolerance to an amphetamine product such as Adderall.

BCN maintains that its denial of coverage for Strattera was in compliance with the terms of Petitioner's certificate, drug rider and prescription drug formulary.

Commissioner's Review

The BCN certificate generally only provides coverage for prescription drugs that are on its formulary. However, the BCN drug rider recognizes that there are exceptions to the formulary limitation under certain conditions:

Included in the BCN Formulary are Covered Drugs which 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.

The language of BCN's drug rider mirrors language in the Michigan Insurance Code that requires exceptions to formulary limitations. Section 3406o of the Insurance Code (MCL 500.3406o) 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. Notice as to whether or not an exception under this subdivision has been granted shall be given by the insurer within 24 hours after receiving all information necessary to determine whether the exception should be granted.

To help the Commissioner resolve the issue of whether Strattera is a medically necessary and appropriate alternative for the treatment of Petitioner's condition, the matter was presented to an independent review organization (IRO) for analysis as required by 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 board certified in pediatrics and has been in practice for over 13 years.

The IRO report explained:

[T]he [Petitioner] was diagnosed with attention deficit disorder by his pediatrician, with input from his school district on 4/15/09 and started on Strattera 10 mg, which was titrated up to 18 mg. . . . [I]t was noted by the [Petitioner's] pediatrician that he was doing well and his attention deficit disorder was controlled on 4/29/09. . . . [O]n 6/3/09, the member was started on Concerta. . . . [T]he [Petitioner] did not do well on Concerta. . . . [A] chart note dated 8/18/10 reported that the [Petitioner] was prescribed Adderall. . . . [A] note from the [Petitioner's] mother stated that he felt terrible on Adderall and that his school work suffered. . . . [T]his statement from the [Petitioner's] mother indicates that he had an intolerance to Adderall. . . . [T]he [Petitioner] tried Concerta from 6/3/09 to 8/18/10 and experienced a treatment failure or intolerance and that he tried Adderall starting on 8/18/10 with a treatment failure or intolerance. Therefore . . . the [Petitioner] meets the Health Plan's criteria for approval of Strattera.

* * *

The IRO reviewer concluded that Strattera is medically necessary for treatment of Petitioner's condition.

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.

The Commissioner finds that BCN's denial of coverage is not consistent with the requirements of section 3406o and the drug rider. Therefore, the Commissioner accepts the conclusion of the IRO and finds that Strattera is a medically necessary and appropriate drug for the treatment of Petitioner's condition.

V ORDER

The Commissioner reverses BCN's October 29, 2010, final adverse determination. BCN shall provide coverage for Strattera within 60 days of the date of this Order and shall, within

seven days of providing coverage, provide the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

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