

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 116656-001

v

Midwestern Dental Plans, Inc.
Respondent

Issued and entered
this 27th day of April 2011
by R. Kevin Clinton
Commissioner

ORDER

I
BACKGROUND

On August 26, 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.*

Midwestern Dental Plans, Inc. (Midwestern) was notified of the request for external review and on August 27, 2010, furnished the information used in making its final adverse determination. On September 2, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's dental care benefits. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner, a retiree, was a member of Midwestern, a system of dental care delivery and financing similar to a health maintenance organization. See MCL 500.3573. Her dental care benefits were defined in Midwestern's Group Member Certificate (the certificate). A copy of the certificate was submitted by Midwestern.

The Petitioner had tooth #28 evaluated in May 2009. To restore the tooth, the dentist presented a treatment plan but before the Petitioner could complete the treatment, her employer terminated her Midwestern group dental coverage on July 1, 2009.

In November 2009, after the Petitioner filed a grievance, Midwestern agreed to cover certain treatment needed to restore tooth #28. During the treatment, crown lengthening on tooth #28 was also recommended. Midwestern denied coverage for the crown lengthening.

The Petitioner appealed the denial of the crown lengthening through Midwestern's internal grievance process. Midwestern affirmed its denial and issued its final adverse determination letter dated July 10, 2010.

III ISSUE

Did Midwestern properly deny the Petitioner coverage for the crown lengthening?

IV ANALYSIS

Petitioner's Argument

After tooth #28 was evaluated, no treatment was rendered for weeks due to scheduling delays and cancellations that Midwestern agreed were not the Petitioner's fault. Even though her coverage had ended, Midwestern decided to complete the restoration of the tooth.

During the course of treatment, the Petitioner says a dentist determined that a crown lengthening on tooth #28 was also needed. In an August 21, 2010 letter to submitted with her request for external review, the Petitioner explained:

This plan included a root canal, post, core and crown. Unfortunately, after I had received the root canal procedure, the [Midwestern] dentist had indicted that, I will need crown lengthening on tooth #28 at a cost of \$684.00, to complete its restoration. I had appealed this charge for the crown lengthening to [Midwestern] and they had denied this appeal.

I am stating that [Midwestern's] dentist caused a fracture under the gum line of tooth #28 as a result of their root canal procedure. This (crown lengthening) procedure was not necessary, based on their first x-rays prior to the root canal procedure. It was not until after the root canal procedure and an additional x-ray that it was determined that crown lengthening will be necessary to complete the treatment plan to restore tooth #28.

The Petitioner argues that Midwestern should be responsible for the "total restoration" of tooth #28, including the crown lengthening.

Respondent's Argument

In its July 27, 2010, final adverse determination, Midwestern denied coverage for the crown lengthening, telling the Petitioner:

As previously stated the crown lengthening would not be covered even if you were still eligible under the Midwestern Dental Plan. You would be charged co-pay accordingly. Your crown lengthening is not necessary due to a delay in your treatment or that your tooth was "leveled" during the root canal. We would like to make clear to you from a clinical standpoint root canals are only concerned with the pulp cavity inside the root of the tooth, it has nothing to do whatsoever with the length of the tooth. A crown lengthening is a surgical procedure exposing more of the tooth for restorative purposes by apically positioning the gingival margin and/or removing supporting bone. Had the crown lengthening been an issue in your original grievance the decision would have been the same. The Plan would have agreed to do just what it did, to cover the cleaning, post/core and crown. You would have been denied the crown lengthening.

Midwestern further explained its position in an August 27, 2010, letter to the Office of Financial and Insurance Regulation:

The [Petitioner's] Grievance is she required restoration on tooth #28 and was not able to complete her treatment before her employer terminated her dental benefit. At the time her benefits were terminated she was treatment planned for a root canal, post/core, a crown and a cleaning on tooth #28. In view of the fact she could not complete the treatment before her benefits ceased Midwestern Dental agreed to cover the required above treatment. Several months later it has been determined the tooth

now requires further treatment than the original plan, a crown lengthening, and she wants coverage for that as well. Midwestern Dental Plans honored her first request however the coverage on this tooth is not open ended. Even if she were to still have benefit this particular procedure would not have been covered anyway. Crown lengthening is not covered.

Midwestern argues that its denial of coverage for the crown lengthening was appropriate.

Commissioner's Review

The Petitioner received emergency walk-in treatment at Midwestern's dental clinic on May 5, 2009, after experiencing problems with tooth #28. A treatment plan was developed that began with root canal therapy and included post and core and a crown. With Midwestern's approval, the root canal was completed in August 2009. When the Petitioner requested coverage for the post and core and crown to complete the restoration of tooth #28, Midwestern denied the request.

The Petitioner filed a grievance with Midwestern, arguing that it was not her fault that she had been unable to complete treatment before her coverage ended on July 1, 2009. Midwestern's grievance committee notes from October 29, 2009, say it "agreed the delay was not on the part of the [Petitioner] and therefore agreed to cover the remainder of the treatment." The Petitioner was informed of the grievance committee's decision in a November 9, 2009, letter:

After reviewing the information, the committee concluded that the delay in your treatment may not have been the direct result of any problem on your part. As such, the committee has agreed to have Midwestern Dental of Woodhaven complete the following procedures at no charge to you:

1. Cleaning
2. Post and Core (tooth #28)
3. Crown (tooth #28)

The Petitioner later asked that a crown lengthening procedure be included in the services needed to restore tooth #28. After Midwestern denied coverage, the Petitioner sought

an external review of that decision from the Commissioner. The Commissioner concludes that it was permissible for Midwestern to deny coverage for the crown lengthening procedure.

It appears to the Commissioner that crown lengthening is a covered benefit and was included in the original treatment plan in May 2009. However, when the Petitioner ceased to be a plan member on July 1, 2009, Midwestern was not responsible for any subsequent services. There is nothing in the record to show that Midwestern committed to covering the crown lengthening after July 1, 2009, as it did the root canal, core and post, and crown. Midwestern's November 9, 2009, letter agreeing to cover certain services did not even mention crown lengthening.

Midwestern has agreed to cover prosthetic devices that are installed within 60 days after coverage terminates, but that exception does not apply under the facts of this case. The certificate says (p. 17):

- A. The term "Covered Dental Services" as used herein shall exclude the following:

* * *

3. Prosthetic devices (including bridges, crowns, inlays, onlays and complete partial dentures and the fitting thereof) ... for which final impressions were taken while the individual was covered under this Agreement, but are not finally installed or delivered to such individual within sixty (60) days after the termination of coverage.

Furthermore, there is nothing in state law that would require Midwestern to cover dental services (even medically necessary dental services) that are received after coverage has terminated; it voluntarily agreed to cover the root canal therapy, post and core, and a crown. The certificate (p. 1) reflects the general rule that coverage is contingent on the payment of premium:

This Group Member Certificate is issued by Midwestern Dental Plans, Inc. (MDPI) to persons who have enrolled as Plan Members. By enrolling in this PLAN and accepting this Member Certificate, the Plan Member agrees to abide by the rules of the PLAN as outlined in this Member Certificate and recognizes that, except for emergency dental services, only those dental services provided or authorized by the PLAN are a benefit under this Member Certificate. Plan Members are entitled to the

dental maintenance organization services and benefits described in the Member Certificate in exchange for Premium paid to the PLAN.
[Underlining added]

The Commissioner concludes that Midwestern was not obligated to cover the crown lengthening procedure and upholds its final adverse determination of July 10, 2010.

**V
ORDER**

The Commissioner upholds Midwestern's July 27, 2010, final adverse determination. Midwestern is not required to cover the crown lengthening on tooth #28.

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.

R. Kevin Clinton
Commissioner