

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. 112212-001

v

Blue Cross Blue Shield of Michigan
Respondent

**Issued and entered
this 28th day of April 2011
by R. Kevin Clinton
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On June 11, 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 (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on June 18, 2010.

The Petitioner receives health care benefits as an eligible dependent through MESSA, a BCBSM-underwritten group. 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 June 29, 2010.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on July 9, 2010.

II FACTUAL BACKGROUND

The Petitioner requested coverage for breast reduction surgery. BCBSM denied authorization, ruling that the surgery is not medically necessary. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM maintained its decision and issued a final adverse determination dated April 13, 2010.

III ISSUE

Did BCBSM properly deny authorization for the Petitioner's surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner states that for the past 8 to 10 years she has been having back, shoulder and neck pain which she attributes to her breast size. This pain interrupts her work day and her life. In her request for review she wrote:

Once I gained a few pounds the pain and discomfort increased to a level of taking pain medications on a daily basis. The sores on my shoulders are treated with antibacterial ointment and bandages when they occur. There are grooves in my shoulders that never go away. I am so afraid of gaining weight for fear of enlargement in my breasts, therefore, I keep to an 800 to 1200 calorie per day diet. I have done everything I can imagine to improve her level of comfort. . . . My exercise has decreased and my cholesterol is increasing as a result.

There have been rounds of physical therapy with no real relief. . . . I have been on flexeril for a couple of years now with little to no relief. My job as a secretary requires that I sit at a computer for hours at a time. The pain and discomfort are almost unbearable. This is the reason I take pain medication daily.

The Petitioner argues that her bilateral breast reduction surgery is medically necessary and should be covered under her health care plan.

BCBSM's Argument

Under the terms of the certificate, a service must be medically necessary in order to be

covered. The medical documentation provided in the Petitioner's case did not meet the established criteria for a bilateral reduction mammoplasty.

BCBSM understands that the Petitioner feels that this surgery will provide her with relief from the pain she is experiencing; however, she simply does not meet the established criteria for coverage. BCBSM maintains that the denial of pre-authorization of the Petitioner's reduction mammoplasty was appropriate under the terms of the certificate.

Commissioner's Review

The Petitioner's coverage is defined in the *MESSA Super Care I- Revised Group Health Care Benefit Certificate*. The certificate (page 54) excludes coverage for services and supplies "that are not medically necessary according to accepted standards of medical practice. . . ."

The question of whether the Petitioner's bilateral reduction mammoplasty is medically necessary for treatment of her condition was presented to an independent review organization (IRO) for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO reviewer is a physician in active clinical practice who is certified by the American Board of Plastic Surgery and the American Board of Otolaryngology and is published in peer reviewed literature. The IRO report included the following comments and conclusions (the complete report is provided to the parties with this Order):

It is the determination of this reviewer that the proposed Bilateral Reduction Mammoplasty is not considered medically necessary for this enrollee's condition.

The [Petitioner] does not meet the BCBSM stated guidelines for reduction Mammoplasty.

National guidelines for reduction mammoplasty, as put forward by the American Society of Plastic Surgeons, require documentation of the severity of the symptoms of macromastia and impact on health related quality of life with at least two of the following signs:

- Chronic breast pain . . . due to weight of the breasts
- Interigo . . . unresponsive to medical management
- Upper back, neck, and shoulder pain . . .
- Backache, unspecified . . .

- Thoracic kyphosis, acquired . . .
- Shoulder grooving from bra straps . . .
- Upper extremity paresthesia . . . due to brachial plexus compression syndrome secondary to the weight of the breasts being transferred to the shoulders strap area.
- Headache . . .
- Congenital breast deformity . . .

The attending physician (AP) has not provided medical records to document anything but pain. There are no photographs presented, which is unusual in the evaluation process for breast reduction. The [Petitioner's] own letter refers to failed physical therapy but there are no clinical records included to corroborate at least three(3) months of conservative therapy. There is no documentation of shoulder ulceration, unresponsive intertrigo, lordotic posture or ulnar paresthesias.

Finally, the medical necessity criteria state that the resection weight of each breast must be at or above the 22nd percentile cutoff weight for body surface area. This [Petitioner's] body surface area calculates to 1.54 which would require at least 280 grams of tissue be removed from each breast. The AP has estimated removal at 250 grams from the right breast and 200 grams from the left, neither of which meets the minimum weight required for approval for breast reduction.

Clinical Rationale for the Decision

The clinical guidelines presented by BCBSM are consistent with the national standards within the Plastic Surgery community. The guidelines help to differentiate the operation of breast lifting which can involve modest reduction in size but is primarily a cosmetic operation, from Breast Reduction which does also lift the breast but is done primarily for medically necessary reasons to reduce or eliminate the symptoms of macromastia. While this [Petitioner] does have pain, the medical record does not document the satisfaction of all necessary criteria that are required to classify her breast reduction as medically necessary.

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 reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in this case.

Therefore, the Commissioner accepts the IRO reviewer's conclusion and finds that the Petitioner's proposed bilateral reduction mammoplasty is not medically necessary for treatment of the Petitioner's condition and is therefore not a covered benefit under the certificate of coverage.

**V
ORDER**

The Commissioner upholds BCBSM's April 13, 2010, final adverse determination. BCBSM is not required to provide coverage for the Petitioner's reduction mammoplasty surgery.

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 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