

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

v

File No. 110934-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 2nd day of May 2011
by R. Kevin Clinton
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On October 20, 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 case was accepted for review on October 27, 2010.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate). 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

From July 2 through July 29, 2008, the Petitioner had occupational therapy provided by XXXXX Physical Therapy Center in XXXXX. XXXXX is a freestanding occupational therapy clinic that is not approved by BCBSM. The charge for this therapy was \$1,290.00. BCBSM denied coverage for this care because occupational therapy is not payable when rendered by an independent occupational therapist at a non-approved freestanding facility.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM

held a managerial-level conference on September 17, 2010, and issued a final adverse determination September 20, 2010 upholding the denial.

III ISSUE

Did BCBSM correctly deny the Petitioner's claims for occupational therapy?

IV ANALYSIS

Petitioner's Argument

The Petitioner says that he verified that occupational therapy was a covered benefit prior to beginning his therapy at XXXXX. He says he was never told that services would not be covered. If he had any reason to believe that his occupational therapy would not be covered he would have used another facility. He says that he had occupational therapy at XXXXX on July 2, 2008 which BCBSM covered. He says he had no reason to believe that his later visits would not be covered as well.

BCBSM's Argument

BCBSM indicates that the certificate has specific criteria for occupational therapy benefits. The Petitioner's contract does not pay for services by an independent therapist in an office setting or nonparticipating facility. The Petitioner received occupational therapy services from an independent therapist at a nonparticipating freestanding facility. BCBSM says this care is not payable because XXXXX Physical Therapy is not a participating facility.

BCBSM states that its records show that on July 2, 2008 BCBSM received a phone call from "XXXXX" at the provider's office. BCBSM indicated it correctly informed the provider that occupational therapy in an office setting is not payable. BCBSM states that its payment of benefits for that session of physical therapy was issued in error.

BCBSM believes it correctly denied coverage for the Petitioner's occupational therapy.

Commissioner's Review

BCBSM cited section 3.28 of the certificate which describes coverage according to the kind

of facility where the service is rendered. Section 3.28, provides:

Physical, occupational and speech therapies are not payable when provided in a nonparticipating freestanding outpatient physical therapy facility, or any other facility independent of a hospital or an independent sports medicine clinic.

In the Petitioner's case, the therapy was provided at XXXXX which is not a hospital or a participating freestanding outpatient physical therapy facility. Therefore, under section 3 of the certificate, XXXXX is not a facility where BCBSM-covered occupational therapy can be administered. Finally, the Petitioner believes that BCBS informed him and his provider that his therapy services were a covered benefit. BCBSM indicated that it did not provide misinformation. Under the PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered health care benefits under the terms of the applicable insurance contract. Resolution of the factual dispute described by Petitioner cannot be part of a PRIRA decision because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements.

The Commissioner finds that the language in the certificate precludes coverage for the occupational therapy provided to the Petitioner at XXXXX Physical Therapy Center.

V ORDER

BCBSM's final adverse determination of September 20, 2010, is upheld. BCBSM is not required to cover the occupational therapy provided from July 2 through July 29, 2008.

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