

**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. 117293-001

v

Blue Care Network of Michigan  
Respondent

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**Issued and entered  
this 2<sup>nd</sup> day of May 2011  
by R. Kevin Clinton  
Commissioner**

**ORDER**

**I  
BACKGROUND**

On September 30, 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.* On October 7, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Commissioner notified Blue Care Network of the external review and requested the information used in making its adverse determination. The information was received on October 12, 2010.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's health 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 is a member of Blue Care Network of Michigan (BCN). Her health care benefits are defined in the BCN 10 certificate of coverage and the Healthy Blue Living (HBL) Rider.

On October 1, 2008, the Petitioner was initially enrolled in the HBL program at the enhanced level. The HBL program is an enhanced benefit program that is described in the rider:

**Healthy Living Program** is the BCN coverage program designed to promote or maintain good health and/or prevent disease or the progression of disease for Members in the Program. The Program rewards Members that maintain or adopt healthier behaviors by making lower copayments, and/or coinsurance and deductibles available to those Members.

BCN terminated the Petitioner's enrollment at the enhanced level effective January 1, 2009, and placed her at the standard level because she failed to meet enhanced level requirements by the December 31, 2008, deadline.

The Petitioner unsuccessfully appealed through BCN's internal grievance process and received its final adverse determination letter dated August 6, 2010.

## III ISSUE

Did BCN properly deny the Petitioner coverage at the enhanced level?

## IV ANALYSIS

### Petitioner's Argument

The Petitioner requests that her coverage in the HBL program be restored to the enhanced level effective January 1, 2010. She argues in her September 27, 2010, letter to OFIR:

I am currently a Blue Care Network member who was placed in the standard plan, instead of the enhanced plan due to late submission of plan requirements. The reason that I feel that my denial should be

overturned is for multiple reasons. I was never informed by my employer/plan administrator that the health risk assessment and qualification form needed to be completed in order to remain in the enhanced plan. Information was not mailed to the correct address to inform me of the plan changes. I was receiving prenatal care at that time and was unaware of plan changes until my providers office informed me of a \$500.00 deductible that must be met before my delivery. I then called and spoke to a BCN representative and she informed me to complete the assessment and qualification form before 1/31/2010 and submit it with a letter stating my current status (pregnancy) and being unaware of the new plan requirements. Everything was completed by 1/21/2010 and no plan changes took place. I was instructed by another BCN representative to submit a grievance and hopefully due to my situation at that time, would be reviewed and changed. My step one grievance was denied, because it stated that the information was mailed to me to inform me about the necessary requirements and the deadline. I spoke to the grievance representative and submitted the email about the incorrect address and he said I would have to apply for a step two and maybe they will take [it] into consideration.

Petitioner's suggested remedy is for BCN to reinstate her enrollment at the enhanced level effective January 1, 2010, due to her special circumstances.

#### Respondent's Argument

In its August 6, 2010, final adverse determination, BCN denied restoration of Petitioner's enrollment at the enhanced level for the October 1 through September 30, 2010, contract year, stating in part:

The Panel has maintained the denial, as you did not complete the requirements to remain in the enhanced benefit level. Blue Care Network did not receive your completed [Health Qualification Form] and [Health Assessment] by the deadline of December 31, 2009.

BCN states that on November 26, 2009, it placed a reminder telephone call to Petitioner regarding the requirements that need to be met for coverage at the enhanced level. In addition, BCN allows for a 60 day extension to submit the Health Assessment when a member's Health Qualification Form (HQF) is submitted timely. However, Petitioner was not granted this extension as she did not have her HQF submitted by the December 31, 2009, deadline as required.

BCN contends that its decision to maintain Petitioner's coverage at the standard level was consistent with the terms of the rider.

### Commissioner's Review

Health maintenance organizations like BCN are permitted to offer wellness programs like HBL which provides for reduced copayments, coinsurance, or deductibles if certain conditions are met. See MCL 500.3426 authorizing "wellness coverage." As a condition of remaining in BCN's Healthy Blue Living enhanced benefit level, an eligible member must meet requirements specified in the rider. The rider lists the requirements for continuing participation:

#### **HOW TO EARN THE HEALTHY LIVING ENHANCED BENEFITS IN THE FIRST YEAR OF ENROLLMENT**

Upon enrollment each Healthy Living Eligible Member will receive Enhanced Benefits for a 90-day period. To continue receiving the Enhanced Benefits each Healthy Living Eligible Member must take the following steps:

1. Within 90 days of enrollment each Healthy Living Eligible Member must complete a Health Risk Assessment (HRA) and a Healthy Living Enrollment Form which will assess the Member's medical condition and/or lifestyle behavior in relation to the following areas:
  - Blood pressure
  - Smoking
  - Cholesterol
  - Blood sugar
  - Weight
  - Alcohol use
2. In order to earn Enhanced Benefits, Healthy Living Eligible Members must achieve a score of 80 points or more on the Healthy Living Enrollment Form. . . . The results must be submitted to BCN within the 90-day time period.

\* \* \*

#### **HOW TO EARN THE HEALTHY LIVING ENHANCED BENEFITS IN SUBSEQUENT YEARS OF ENROLLMENT**

- Healthy Living Eligible Members who have qualified to earn Enhanced Benefits in their preceding year may continue to earn Enhanced Benefits by following the steps outlined in "How to Earn the Healthy Living Enhanced Benefits in the First Year of Enrollment," above. These steps will begin on the date of renewal of each year of enrollment.

- Healthy Living Eligible Members who qualified for Standard Benefits in the preceding year automatically will retain Standard Benefits during the first 90 days after renewal. During that 90-day period, those Members will have the opportunity to earn Enhanced Benefits by following the steps outlined in “How to Earn the Healthy Living Enhanced Benefits in the First Year of Enrollment,” above.
- **Note:** Enhanced Benefits will not become available for these Members until the Members have completed Steps 1-4 outlined in “How to Earn the Healthy Living Enhanced Benefits in the First Year of Enrollment”, above. The right to receive the Healthy Living Enhanced Benefits is not retroactive.

Because Petitioner failed to meet requirements for the enhanced level for the October 1, 2008, through December 31, 2008, contract year, for the contract year beginning October 1, 2009, she remained at the standard level. Petitioner also expressed concerns that she did not receive a reminder to submit her forms by the deadline. However, nothing in the rider requires BCN to provide such reminders (they simply are provided as a courtesy to their members).

Petitioner had a second opportunity to enroll at the enhanced level during the October 1, 2009, through December 31, 2009, enrollment period but again failed to meet requirements by submitting her HRA and HQF forms by the December 31, 2009, deadline.

Though the petitioner may have had a reasonable explanation, the Commissioner’s authority is limited to determining whether Blue Care Network acted consistent with the terms of the contract. The Petitioner’s form was not submitted within 90 days as required under the terms of the rider. The Commissioner, therefore, finds that BCN’s denial is consistent with its Healthy Blue Living rider. The Petitioner may reapply for the BCN Healthy Blue Living enhanced benefits level at the next open enrollment.

## **V ORDER**

The Commissioner upholds BCN’s August 6, 2010, final adverse determination. BCN is not required to restore the Petitioner’s enrollment at the enhanced level.

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.

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R. Kevin Clinton  
Commissioner