

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. 120099-001

v

Blue Care Network of Michigan
Respondent

**Issued and entered
this 3rd day of May 2011
by R. Kevin Clinton
Commissioner**

ORDER

**I
BACKGROUND**

On March 16, 2011, XXXXX, authorized representative of her adult daughter 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 March 23, 2011. Because the case presented a medical question, the matter was assigned to an independent medical review organization which submitted its recommendation on April 4, 2011.

**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.

Petitioner requested authorization for bone graft surgery to seal off an extra sinus that is causing recurrent sinus infections. BCN denied the request. The Petitioner appealed the denial through BCN's expedited internal grievance process and received the March 3, 2011 final adverse determination letter.

III ISSUE

Did BCN properly deny the Petitioner coverage for the proposed dental bone graft surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner's mother says in her request for external review:

My daughter has an extra sinus in her face. She has had at least 6 sinus surgeries. Dr. XXXXX referred her to Dr. XXXXX for sinus surgery. Dr. XXXXX is putting a bone graft to seal off the extra sinus so her face is not continually infected. We are told insurance won't cover [the surgery] because bone grafts are usually for implants. This one is to fix her sinus otherwise she can't get rid of the infection.

Respondent's Argument

BCN's records of Petitioner's coverage request state that the oral surgeon's plan was "to place new bone graft to right maxillary sinus, in preparation for a dental implant." In its March 3, 2011, final adverse determination, BCN wrote:

[T]he preparation for and insertion of dental implants are dental procedures and therefore, not covered under the enclosed BCN Medical Policy titled "Mandibular and Maxillary Implants." The placement of a bone graft is considered preparation for insertion of a dental implant. Also, please refer to the enclosed Blue Care Network 10 Certificate, section 2.14, titled "Dental Services" which states services primarily dental in nature are not a covered benefit.

Commissioner's Review

The BCN certificate includes the following provisions:

1.19 Oral Surgery

Oral Surgery and X-rays are covered only when BCN authorizes them for:

- Treatment of fractures or suspected fractures of the jaw and facial bones and dislocation of the jaw.
- Oral surgery and dental services necessary for immediate repair of trauma to the jaw, natural teeth, cheeks, lips, tongue, roof and floor of the mouth.
- Dental anesthesia in an outpatient setting when medically necessary and approved by BCN.

NOTE: "Immediate" means treatment within 72 hours of the injury.

- Medically necessary surgery for removing tumors and cysts within the mouth. . . .

Part 2: Exclusions and Limitations

* * *

2.14 Dental Services

We do not cover dental services, dental prostheses, replacement of teeth, X-rays, anesthesia for dental procedures or oral surgery except as specifically stated in Section 1.19.

In its final adverse determination, BCN also referenced its medical policy governing mandibular and maxillary implants. That document includes a provision that is similar to the exclusion in section 2.14 of the certificate of coverage. The medical policy provision states:

The preparation and insertion of implants are dental in nature and therefore, not a covered benefit under BCN medical policy.

In order to resolve the question of whether the proposed bone graft surgery is primarily dental in nature, the Commissioner requested analysis by an independent review organization (IRO). The review was conducted by a dentist who is board certified in oral and maxillofacial surgery and has been in active practice for more than 15 years. The IRO reviewer explained:

[T]he member underwent a sinus lift for ridge augmentation in order to place a dental implant on 11/22/10. . . . [P]ostoperatively, the member developed an infection with loss of the graft. . . . [T]he area was debrided on 12/8/10 and was healing well at a follow-up visit on 12/15/10. . . . [T]he treatment plan is to redo the bone grafting of the area. . . . [T]he grafting of the member's maxillary sinus on 11/22/10 was performed in order to increase the amount of bone available to place dental implants. . . . [T]he requested bone graft surgery would be performed for the same reason as the initial grafting surgery. . . . The requested bone graft surgery is primarily dental in nature.

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'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 for the proposed surgery was appropriate under the terms of the certificate, the surgery being dental in nature.

V
ORDER

The Commissioner upholds BCN's March 3, 2011, final adverse determination. BCN is not required to provide coverage for Petitioner's bone graft surgery.

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