

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. 117469-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 19th day of May 2011
by R. Kevin Clinton
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 8, 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 Commissioner reviewed the material submitted and accepted the request on October 15, 2010. The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information it used in making its adverse determination. The Commissioner received BCBSM's response on October 26, 2010.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendation on October 28, 2010.

II
FACTUAL BACKGROUND

The Petitioner receives health care benefits through the Michigan Education Special Services Association (MESSA). The coverage is underwritten and administered by BCBSM. Her

benefits are defined in the *MESSA Choices Group Health Care Benefit Certificate* (the certificate).

On June 21, 2010, the Petitioner underwent a hernia repair and an abdominoplasty. Abdominoplasty is surgery of the abdomen that typically involves removal of excess skin and fat and tightening of the abdominal muscles.

BCBSM reimbursed the surgeon and hospital for the hernia repair but denied reimbursement for the abdominoplasty because it determined it was not medically necessary. The amount in question for the abdominoplasty is \$8,125.00.

The Petitioner appealed BCBSM's denial. After a managerial-level conference on September 14, 2010, BCBSM did not change its decision and issued a final adverse determination dated October 2, 2010.

III ISSUE

Is BCBSM required to cover the Petitioner's abdominoplasty?

IV ANALYSIS

Petitioner's Argument

The Petitioner believes that her abdominoplasty was medically necessary and a covered benefit under the MESSA certificate. For this reason, she believes that BCBSM is required to pay for this care.

BCBSM's Argument

In "Section 1: The Language of Health Care," the certificate (p. 1.8) says, "A service must be **medically necessary** to be covered."

Medical necessity is determined by physicians acting for MESSA and BCBSM, based on criteria and guidelines developed by physicians for BCBSM, who are acting for their respective provider type and/or medical specialty. BCBSM's medical policy title "Abdominoplasty" (pp. 3-4) explains when an abdominoplasty is considered reconstruction (medically necessary) and not

cosmetic:

Inclusionary and Exclusionary Guidelines ...

This procedure [abdominoplasty] is considered reconstruction and not cosmetic if either Criteria A or Criteria B are met.

Criteria A: Must meet all of the following requirements:

1. The patient has had a documented massive weight loss of at least 100 pounds or whose panniculus hangs below the level of the pubis as a result of bariatric surgery or dieting; and
2. The panniculus is so large that it causes uncontrolled intertrigo (which is unresponsive to conservative therapy including topical drying agents, corticosteroids and appropriate antibiotics), skin ulceration, skin necrosis or chronic intractable low back pain; and
3. Sufficient time has elapsed (a minimum of six months) so as to ensure maximum weight loss and weight stability.

OR

Criteria B: This surgery is performed on an abnormal structure of the body, caused by a congenital defect, developmental abnormality, infection or tumor and is accompanied by a functional impairment.

In Petitioner's case, BCBSM determined, based on the medical documentation provided, that the Petitioner did not meet the medical policy's established criteria (A or B) for a reconstructive procedure; therefore her surgery was considered cosmetic in nature, i.e., not medically necessary. BCBSM says it understands that the Petitioner feels the abdominoplasty was medically necessary but says she simply does not meet the established criteria for coverage.

Commissioner's Review

To answer the question of whether the Petitioner's abdominoplasty surgery was medically necessary, the Commissioner presented that issue to an independent medical review organization (IRO) for analysis. The IRO reviewer is a physician who is board certified in plastic surgery and is in active practice. The IRO reviewer's report included this analysis:

There are no submitted medical records to document that the [Petitioner's] abdominal pannus was causing a physical functional impairment such as an inability to ambulate or perform any other activity of daily living. There is also no documentation that it was causing a clinically significant dermatological complication such as intertrigo, cellulitis, rash or ulceration recurrent or refractory to medically supervised medical treatment.

Per guidelines of the American Society of Plastic surgeons, "Resection of redundant skin and fat folds is medically indicated if panniculitis or uncontrollable intertrigo is present." In this case there are no medical records submitted documenting this condition. Similarly, an abdominoplasty is also not identified as being medically necessary since it includes not only a lower abdominal panniculectomy but also includes translocation of the umbilicus and may include plication of the abdominal wall musculature. Any tightening of the musculature would be a component of the ventral herniorrhaphy if thought to be required to obtain closure. Otherwise, muscle plication in the context of an abdominoplasty would have a primary effect of improving the contour of the abdomen, i.e. cosmesis. Translocation of the umbilicus simply allows for the upper abdominal skin and fat to be repositioned to the lower abdomen thereby allowing more skin and fat folds to be removed to further improve the appearance of the abdomen, i.e. cosmesis.

The standard of care to treat dermatological conditions secondary to an abdominal pannus is initial medical therapy with medically supervised treatment including drying agents, appropriate antimicrobials if necessary, topical antiinflammatory medications, meticulous skin and mechanical support of the skin. If this treatment is unsuccessful, then surgical intervention is medically necessary.

The IRO report concluded:

It is the determination of this reviewer that the abdominoplasty performed on June 21, 2010, is not identified 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 extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the recommendation of the IRO and finds that the Petitioner's abdominoplasty provided on June 21, 2010, was not medically necessary.

V
ORDER

Respondent BCBSM's October 2, 2010, final adverse determination is upheld. BCBSM is

not required to cover the Petitioner's abdominoplasty since it was not medically necessary and therefore not a covered benefit under the certificate.

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