

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. 118098-001

v

Blue Care Network of Michigan
Respondent

**Issued and entered
this 23rd day of June 2011
by R. Kevin Clinton
Commissioner**

ORDER

I. PROCEDURAL BACKGROUND

On November 16, 2010, XXXXX, on behalf of her minor 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 Commissioner notified Blue Care Network of Michigan (BCN) of the external review and asked for the information it used in making its adverse determination. The Commissioner received initial information from BCN on November 18, 2010.¹ On November 23, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request.

The issue in this external review can be decided by contractual analysis. The contract that defines the Petitioner's benefits is the BCN 5 Certificate of Coverage (the certificate). The Commissioner reviews contractual issues under MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

¹ Additional information was received on December 2, 2010.

II. FACTUAL BACKGROUND

The Petitioner, born October 2, 1995, injured her back in November 2009 when she struck a guard rail. As a result, at age 14 she was diagnosed with lumbago and her physician prescribed physical therapy (PT) to treat her condition.

From May 17 through July 8, 2010, the Petitioner had 14 visits for PT.² However, the therapy was too painful and she discontinued it. She saw a physical medicine and rehabilitation specialist for pain injections and once the injections were completed she was advised to resume the PT.

On August 11, 2010, a new request for PT was sent to XXXXX, BCN's administrator for therapy services. The request was denied on the basis that her maximum PT benefit for the year had been reached.

The Petitioner appealed the denial through BCN's internal grievance process. BCN maintained its denial and sent the Petitioner its final adverse determination letter dated October 1, 2010.

III. ISSUE

Did BCN properly deny coverage for additional PT visits under the terms of the certificate?

IV. ANALYSIS

Petitioner's Argument

According to BCN's grievance panel notes, the Petitioner's accident in November 2009 caused pain in her lower back and produced mechanical and somatic dysfunction of her pelvis and lumbar and sacral spine with occasional left leg pain. After the period of PT from May to July 2010, the Petitioner stopped the therapy because neither short nor long-term goals were being met.

² In some documents in the record, the PT was said to have begun on May 4, 2010. The Commissioner accepts BCN's April 28, 2011, statement that the first PT visit it paid for was on May 17, 2010.

Following a magnetic resonance imaging (MRI) test on July 1, 2010, and pain injections, the Petitioner's doctors wanted her to start a new PT regimen. A request was made in August 2010 for additional PT and it was denied by BCN.

The Petitioner is requesting BCN to cover additional PT visits to improve her condition.

Respondent's Argument

BCN states it denied coverage for additional PT visits because the Petitioner had exhausted her PT benefit for the 2010 calendar year. BCN based its decision on this provision in the certificate (p. 8):

1.14 Outpatient Rehabilitation

Outpatient rehabilitation includes:

- Medical rehabilitation
- Physical therapy
- Occupational therapy
- Speech therapy

Short-term outpatient medical rehabilitation and physical, occupational and speech therapy are covered when they are medically necessary for a condition that can be expected to improve significantly within 60 consecutive days. These services must be preauthorized by your Primary Care Physician and BCN.

* * *

Limitation: One period of treatment for any combination of therapies within 60 consecutive days is covered per medical episode.

BCN says the Petitioner exhausted her 60 consecutive day benefit for PT in July 2010 and therefore its denial of additional PT visits was correct.

Commissioner's Review

The certificate covers PT when it is medically necessary. However, the benefit is limited to 60 consecutive days of rehabilitation therapy (any combination of physical, occupational, speech, or medical rehabilitation) per medical episode. Moreover, the PT must be "for a condition that can be expected to improve significantly within 60 consecutive days." The Commissioner finds that BCN's denial of additional PT visits was correct under the facts of this

case.

The certificate says there is “one period of treatment for any combination of therapies within 60 consecutive days is covered per medical episode.” That limitation is further explained in BCN’s medical policy title “Physical & Occupational Therapy (Outpatient)” on p. 3:

- Coverage for therapy (PT, OT and speech) or any combination of therapy modalities is limited by the member's specific certificate level and is based on a calendar year (January 1 to December 31) unless the particular employer group specifies another time period.
- The treatment period commences with the first day of treatment. It does not begin with the initial evaluation unless treatment is also given on the day of the evaluation.
- The benefit renews on January 1 of each year (unless otherwise specified by a particular employer group) for each specific unrelated condition.³
- Coverage may be available for treatment of an acute exacerbation or a change in status of a chronic condition if there is expectation of significant improvement within 60 days. A chronic condition may include, but is not limited to cerebral palsy, multiple sclerosis, hemiplegia, etc. . . .

According to BCN, the Petitioner’s first day of PT was May 17, 2010. Thus, the PT benefit for 2010 would expire 60 days after that date or on July 16, 2010.

BCN’s medical policy allows consideration for additional PT therapy beyond the 60-day period when there is “an acute exacerbation or a change in status of a chronic condition if there is expectation of significant improvement within 60 days.” However, there is no basis for a finding in this record that there had been an acute exacerbation of a change in status in the Petitioner’s condition that would significantly improve within 60 days with additional PT. In fact, it appears that the Petitioner stopped the PT in July 2010 because it was not

³ The record does not establish if the Petitioner’s outpatient rehabilitation benefit renews each year.

improving her condition. The Petitioner may present documentation to BCN if she believes that her condition merits consideration for further PT under the medical policy.

The Commissioner concludes and finds that BCN's denial of additional PT for the Petitioner was in accordance with the terms and conditions of the certificate.

V. ORDER

The Commissioner upholds Blue Care Network's October 1, 2010, final adverse determination.

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 60 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 the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner