

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & 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. 118545-001

Blue Cross Blue Shield of Michigan
Respondent

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

ORDER

I. PROCEDURAL BACKGROUND

On December 13, 2010, XXXXX, authorized representative on behalf 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 Commissioner reviewed the material submitted and accepted the request on December 20, 2010.

The Commissioner assigned the case to an independent medical review organization which provided its analysis and recommendations to the Commissioner on January 7, 2011.

II. FACTUAL BACKGROUND

The Petitioner receives group health care benefits as a dependent under her mother's Blue Cross Blue Shield of Michigan (BCBSM) coverage. The terms of her coverage are found in the BCBSM *Community Blue Group Benefits Certificate*.

On May 22, 2009, the Petitioner underwent osteochondral grafting of the shoulder. BCBSM denied coverage for the surgery having concluded that the procedure is experimental and therefore not a benefit under the certificate.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on November 8, 2008 and issued a final adverse determination dated November 9, 2010, upholding its position.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's shoulder surgery?

IV. ANALYSIS

Petitioner's Argument

The Petitioner says she had two prior surgeries on her shoulder before the May 22, 2009 surgery that is the subject of this review. However, the prior surgeries did not help her and she could not live the life of a normal 21 year old. After the May 22, 2009 surgery, the Petitioner states that she is free of pain and has full movement of her shoulder with no dislocations.

The Petitioner indicated that she was told that this surgery was necessary and the only option for her. She was not aware that this surgery was considered experimental. The Petitioner believes that her surgery was medically necessary and a covered benefit under her BCBSM certificate. She believes that BCBSM is required to pay for this care.

BCBSM's Argument

BCBSM states that in the certificate under "Section 6: General Conditions of Your Contract," experimental services are excluded from coverage:

Experimental Treatment

Services That Are Not Payable

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment . . . In addition, we do not pay for administrative costs related to experimental treatment or for research management.

In Section 7, "experimental treatment" is defined as:

Treatment that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional treatment. Sometimes it is referred to as "investigational" or "experimental services."

BCBSM also relied on its medical policy titled, "Osteochondral Grafts for Articular Cartilage Repair (Autografts, Allografts and Synthetic Grafts)," for its decision to deny coverage. The policy says in pertinent part:

Other Joints:

Osteochondral auto- and allografts have been attempted for repair of other joints, including the shoulder and elbow and hip. There have been few studies with limited numbers of patients. Randomized, controlled studies are needed to determine long-term effectiveness for these procedures.

BCBSM has determined that osteochondral grafting of the shoulder is experimental/investigational treatment because the safety and effectiveness of this surgical procedure has not been proven. BCBSM acknowledges that the Petitioner's provider recommended this surgery. However, this surgery is simply not a covered benefit.

Commissioner's Review

The question of whether the Petitioner's procedure is experimental treatment for her condition was presented to an independent review organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO reviewer is a physician in active practice certified by the American Board of Orthopaedic Surgery and published in peer-reviewed literature. The IRO reviewer's report summarized the present state of research and evaluation of the osteochondral allograft transplantation shoulder procedure and then offered the following conclusion and analysis:

It is the determination of this reviewer that the osteochondral allograft transplantation surgical procedure is not considered experimental for [the Petitioner's] condition.

Clinical Rationale for the Decision:

This case involves a young enrollee who has failed multiple shoulder stabilization procedures for a diagnosis of recurrent instability. In this case, the instability is associated with a Hill-Sachs lesion that is felt to engage the glenoid during normal range of motion leading to dislocation. Osteochondral allograft transplantation is a relatively new method of restoring a normal, spherical humeral head eliminating engagement of the Hill-Sachs lesion reducing the incidence of dislocation. In a young enrollee with a history of prior failed attempts at surgical stabilization this seems reasonable. The only other option of restoring the normal anatomy would involve a prosthetic option, which is clearly not an optimum alternative for a young individual, but rather reserved for older individuals nearing retirement age.

There is no definitive age for a prosthetic option. Most surgeons would prefer their patients to be greater than sixty (> 60) years old. This concern relates to the longevity of any prosthesis. A twenty one (21) year old female who is of child-bearing age and is active is not an ideal candidate for any type of shoulder replacement or implant. Every attempt should be made to allow this individual to

keep her own shoulder joint prior to consideration of a prosthetic option. Therefore, osteochondral allograft transplantation would be the most appropriate option for a young patient as in this [Petitioner's] case and its use in this patient's clinical scenario is considered to be the standard of care in the community.

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 expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner finds that the osteochondral grafting of the shoulder surgery is not experimental for treatment of the Petitioner's condition and is therefore a covered benefit under the terms of the certificate.

V. ORDER

Respondent BCBSM's November 9, 2010, final adverse determination is reversed. BCBSM is required within 60 days to cover the Petitioner's May 22, 2009, osteochondral grafting surgical procedure and must provide the Commissioner proof within seven days of the coverage being provided.

To enforce this Order, the Petitioner must report any complaint regarding the implementation of this Order to the Office of Financial and Insurance Regulation, Health Plans Division, toll free 877-999-6442.

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 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