

**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. 120336-001

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 March 30, 2011, 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 March 31, 2011, after a preliminary review of the material submitted, the case was accepted. A medical review was requested from an independent review organization which submitted its analysis on April 14, 2011.

II. FACTUAL BACKGROUND

The Petitioner is 63 years old and has been a member of Blue Care Network of Michigan (BCN) since January 1, 2010. He is a UAW XXXXX retiree and receives health benefits under the *BCN 1 Certificate of Coverage*. In addition to the certificate, two riders govern the terms and conditions of his prescription drug coverage. BCN's *PDR \$10/\$25C Prescription Drug Rider* sets the terms and conditions for prescription drug coverage. On January 1, 2010, XXXXX amended its prescription drug coverage by adding an additional rider, *Proton Pump Inhibitor Prescription Drug Exclusion Rider*, which excludes coverage for proton pump inhibitor drugs unless prescribed for Barrett's Esophagitis or Zollinger-Ellison syndrome.

The Petitioner has a history of reflux esophagitis. He has tried to treat his condition with several drugs: Omeprazole, Zantac, Prevacid, and Prilosec. The Petitioner says in 2010

he began using Nexium on a trial basis and found it provided relief for his condition. Petitioner requested coverage for Nexium to treat his condition. BCN denied coverage. The Petitioner appealed BCN's decision through BCN's internal grievance process and received a final adverse determination letter dated March 11, 2011.

III. ISSUE

Did BCN properly deny the Petitioner coverage for Nexium?

IV. ANALYSIS

Petitioner's Argument

Petitioner says his acid reflux is so bad that he often chokes while eating and has to sleep in his recliner to prevent choking while sleeping. He says Nexium is the only drug that provides relief.

Respondent's Argument

In its March 11, 2011, final adverse determination, BCN denied coverage for the Nexium stating:

[Y]our drug rider does not provide coverage for the proton-pump inhibitor class of medication except when used for the treatment of Barrett's Esophagus or Zollinger-Ellison Syndrome. Based on the information presented, you are not being treated for either condition. . . .

BCN maintains that its decision to deny coverage for the Nexium was in compliance with the terms of Petitioner's coverage.

Commissioner's Review

BCN's decision to deny Petitioner coverage for Nexium was based on the *Proton Pump Inhibitor Prescription Drug Exclusion Rider* which provides:

This rider is issued to you in connection with your Certificate of Coverage and Prescription Drug Rider. It is effective on the date indicated in notice to your Group. This rider amends your Certificate and Prescription Drug Rider as follows:

There is no coverage under this rider for drugs within the Proton Pump Inhibitor Drug Class except in cases with a confirmed diagnosis of Barrett's Esophagitis or Zollinger-Ellison Syndrome when authorized by BCN. All other provisions of your Prescription Drug Rider remain the same.

BCN provides no coverage for proton pump inhibitor drugs used to treat Petitioner's condition. BCN is not required to provide such coverage by any existing state law.

The medical reviewer in this case concluded that Nexium was medically necessary to treat the Petitioner's condition. However, the Petitioner's employer has elected to adopt a rider which excludes the drug for Petitioner's condition. Coverage for even a medically necessary drug may be excluded by an employer.

The Commissioner finds that BCN's denial was consistent with the terms of the certificate and related drug riders.

V. ORDER

The Commissioner upholds BCN's March 11, 2011, final adverse determination. BCN is not required to provide coverage for Nexium to treat the Petitioner's condition.

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 Financial and Insurance Regulation, Health Plans Division, P.O. Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner