

**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. 117438-001

v

Blue Care Network of Michigan  
Respondent

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**Issued and entered  
this 30<sup>th</sup> day of June 2011  
by R. Kevin Clinton  
Commissioner**

**ORDER**

**I. BACKGROUND**

On October 6, 2010, XXXXX, authorized representative of 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.*

Blue Care Network of Michigan (BCN) was notified of the request for external review and on October 7 and October 14, 2010, furnished the information it used in making its final adverse determination.

The Commissioner initially accepted this case on October 13, 2010, believing it involved only contractual issues. Subsequently, the Commissioner concluded this case would benefit from review by an outside medical expert and it was assigned to an independent review organization on October 18, 2010. The independent review organization submitted its recommendation to the Commissioner on November 1, 2010.

## II. FACTUAL BACKGROUND

The Petitioner is a member of BCN. Her health care benefits are defined in the BCN 1 Certificate of Coverage (the certificate).

In 2010 the Petitioner became pregnant with twins as a result of in vitro fertilization. On May 3, 2010, her primary care physician submitted a request to BCN for a “multifetal pregnancy reduction” to reduce her pregnancy to only one fetus. BCN denied the request on May 4, 2010.

On May 5, 2010, the Petitioner proceeded with the fetal reduction at an out-of-network facility outside Michigan. The charge was \$3,060.00.

The Petitioner appealed BCN’s denial through its internal grievance process. BCN maintained its denial and issued a final adverse determination dated August 13, 2010.

## III. ISSUE

Did BCN correctly deny the Petitioner coverage for the multifetal pregnancy reduction?

## IV. ANALYSIS

### Petitioner’s Argument

On the request for external review form the Petitioner explained her reasons for having the multifetal pregnancy reduction procedure:

For several years my husband and I were unable to conceive. We have tried multiple methods and saw various physicians including OB/GYN, reproductive endocrinology urology and internal medicine. We tried several strategies including pills, injections and intrauterine insemination and in vitro fertilization. All these efforts had failed. On our second attempt at IVF, I became pregnant with twins. Unfortunately, the years of infertility had put strain on my husband. He suffers chronically from anxiety but has been doing well on Lexapro. The stress of the twin pregnancy caused a snap in his ability to cope. He was able to work, but was not able to handle most social interactions and completely withdrew from our marriage. He had minimal contact with his children during this period. . . . His complete emotional withdraw[al] put added stress on me. I am generally healthy and do not take daily medications, but I needed Ambien to sleep and BuSpar to help control anxiety attacks. I had many sleepless nights. . . . Eventually I decided to reduce the pregnancy to one. This was a very difficult decision for me on all levels, personal, religious, social and psychological. However, at that time, I was desperate to reverse the collapse of my marriage. I was unable to find a provider in Michigan, so I sought one in Chicago. The procedure was

successful in terms of the reduction, and it caused my husband to come back from his abyss. Now, I am doing well and the pregnancy is proceeding well. I no longer require any sedatives.

The Petitioner's primary care physician stated, "The need for this procedure was precipitated by the mental health breakdown of [the Petitioner and her husband] caused by the twin pregnancy. . . . The twin pregnancy caused severe emotional stress and marital disharmony. . . ."

The Petitioner wants BCN to cover the multifetal pregnancy reduction procedure because it was needed for psychological reasons.

#### Respondent's Argument

Following step 1 of its internal grievance process, BCN stated it denied coverage for the multifetal pregnancy reduction because the pregnancy was the result of in vitro fertilization and since in vitro fertilization is not a covered benefit under the certificate, no services related to it would be covered.

However, at the conclusion of step 2 of the internal grievance process, BCN, in its August 13, 2010, final adverse determination, gave the following reasons for denying coverage:

The [grievance] Panel . . . maintained the denial as the procedure does not meet locally accepted medical practice. Per our Multifetal Pregnancy Reduction medical policy, the procedure is performed to increase the likelihood that the pregnancy would continue. The risk of the pregnancy continuing was not at issue in this case. In addition, the services were provided by an out of network (out of state) provider.

#### Commissioner's Review

BCN gave three reasons for denying coverage. One of those reasons was that the service was performed by a provider outside BCN's network. The certificate (p. 1) states: "Except for emergency care<sup>1</sup> . . . coverage under this Certificate for services and benefits . . . is available only when provided, authorized, or approved by Health Plan [BCN]."

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<sup>1</sup> Nothing in the record would support a finding that the multifetal pregnancy reduction procedure was done on an emergency basis.

According to BCN's notes of the grievance conference, the Petitioner's primary care physician submitted a request for the multifetal pregnancy reduction on May 3, 2010, and indicated that the procedure was scheduled for May 5, 2010, with an out-of-network provider in Illinois. BCN specifically denied the request on May 4, 2010. The multifetal pregnancy reduction procedure was performed on May 5, 2010, without BCN's authorization.

The certificate (p. 9) excludes coverage for unauthorized out-of-plan services:

### **2.01 Unauthorized and Out-of-Plan Services**

The Health Plan is not an insurance company but a health maintenance organization which operates on a direct service basis. Health, medical, hospital, and other services obtained by a Member outside of the Health Plan and not pre-authorized by a Plan Physician are not a covered benefit under this Certificate and cannot be reimbursed to the Member or paid for by the Health Plan. . . .

The requirement that services must be performed by a network provider is consistent with managed care contracts. As a health maintenance organization (HMO), BCN operates within a network of providers who agree to accept BCN's negotiated rates. If an HMO member uses a non-network provider without prior authorization, payment for those services may be greatly reduced or even excluded entirely.

After receiving BCN's denial on May 4 2010, the Petitioner, before going ahead with the procedure, could have asked for a review of that adverse determination through BCN's internal grievance process and from the Commissioner under the Patient's Right to Independent Review Act (including an expedited review if time was a factor). Since she did not receive prior authorization, BCN correctly declined to cover the multifetal pregnancy reduction procedure and the Commissioner upholds BCN's final adverse determination.

In deciding this case on the basis that the Petitioner did not have prior authorization before receiving services from an out-of-network provider as required by the terms of the certificate, the Commissioner does not need to take up BCN's other arguments. However, the

Commissioner does want to address the recommendation of the independent review organization (IRO) even though it was not needed to resolve this case.

Because BCN cited its medical policy<sup>2</sup> title “Multifetal Pregnancy Reduction” as one of the reasons for its denial, the Commissioner believed the case might also involve medical issues and assigned it to an IRO.

BCN's medical policy (p. 1) explains that multifetal pregnancy reduction “is a technique that reduces the number of fetuses in an effort to increase the likelihood that the pregnancy will continue.” The policy recognizes that the safety and effectiveness of multifetal pregnancy reduction has been established and that it may be considered “a useful therapeutic option for a woman in her first trimester of pregnancy . . . for whom the treating physician has determined that the viability of all of the fetuses or the health of the mother would be jeopardized if selective fetal reduction were not done.”

The medical policy is clear that there are medical considerations that must be taken into account before the procedure will be approved. The policy has these guidelines:

**Inclusionary and Exclusionary Guidelines (Clinically based guidelines that may support individual consideration and pre-authorization decisions)**

Multifetal pregnancy reduction(s) may be considered medically appropriate for the following:

- Pregnant women carrying three or more fetus(es),
- Pregnant women carrying three or less fetus(es) with a co-morbid maternal condition,
- Pregnant women carrying more than one fetus, where a fetal anomaly is present that puts the mother's health at risk,
- Pregnant women carrying more than one fetus and whose attending physician determines the medical necessity for fetal reduction, in order to minimize maternal-fetal morbidity and/or mortality, which would include but are not limited to:
  - The previous loss of a multiple pregnancy, when the multiple pregnancy itself has been determined to be the proximate cause of the loss,

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2. The certificate (p. 14) says that BCN “may adopt reasonable policies, procedures, rules, and interpretations to promote orderly and efficient administration of this certificate.”

- The presence of a scarred uterus, or
- The presence of a maternal illness clinically judged to preclude carrying a multiple pregnancy,
- Monozygotic multiple pregnancy.

The Commissioner asked the IRO whether the multifetal pregnancy reduction was medically appropriate for the Petitioner under the criteria of the medical policy. The IRO reviewer is a physician who is board certified in obstetrics and gynecology and has been in active practice for more than 15 years. The IRO reviewer explained:

The MAXIMUS physician consultant explained that the [Petitioner] did not have a comorbidity during her twin gestation. The MAXIMUS physician consultant noted that the [Petitioner] had anxiety and insomnia, as well as marital trouble. The MAXIMUS physician consultant indicated that these conditions are not considered comorbidities that could jeopardize the life of the mother. The MAXIMUS physician consultant also indicated that the [Petitioner] did not have comorbidities that would jeopardize her health or the health of her fetuses. The MAXIMUS physician consultant explained that while the [Petitioner] suffered from anxiety and poor sleep, her health was not in serious jeopardy. The MAXIMUS physician consultant noted that the treating physician reiterated the [Petitioner's] insomnia and anxiety as a result of carrying twins to support the decision to reduce her pregnancy. The MAXIMUS physician consultant also noted that these conditions are not considered to jeopardize a mother's health and do not warrant reduction of a twin pregnancy.

In the IRO reviewer's opinion, there was no medical condition present that would jeopardize the life or health of the Petitioner or the fetuses and thus warrant the fetal reduction procedure under the criteria of BCN's medical policy. Therefore, even if this matter had been resolved as a medical issue, the Commissioner concludes (without finding) that BCN would likely have prevailed.

The Commissioner concludes and finds that under the terms and conditions of the certificate BCN is not required to cover the Petitioner's multifetal pregnancy reduction because there was no prior authorization for it.

## **V. ORDER**

The Commissioner upholds BCN's August 13, 2010, final adverse determination. BCN is not required to cover Petitioner's May 5, 2010, multifetal pregnancy reduction.

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, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton  
Commissioner