

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. 118032-001

v

Blue Care Network of Michigan
Respondent

**Issued and entered
this 11th day of July 2011
by R. Kevin Clinton
Commissioner**

ORDER

I. BACKGROUND

On November 10, 2010, XXXXX 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 immediately notified Blue Care Network of Michigan (BCN) of the request for external review and asked for the information used it used to make its adverse determination. Information was received on November 11 and November 19, 2010.

On November 17, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Petitioner's health care benefits are defined in the BCN 10 Certificate of Coverage and its Healthy Living rider (the rider). The issue in this external review can be decided by an

analysis of the terms of the rider. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner is a BCN member as an eligible dependent under his spouse's coverage. His BCN coverage (and that of his spouse) was effective April 1, 2010, and terminated on July 31, 2010.

When his coverage with BCN began on April 1, 2010, the Petitioner and his spouse were conditionally enrolled in the Healthy Living Program (HLP) for 90 days. The HLP is an enhanced benefit program that is described in the rider:

Healthy Living Program is the BCN coverage program designed to promote or maintain good health and/or prevent disease or the progression of disease for Members in the Program. The Program rewards Members that maintain or adopt healthier behaviors by making lower copayments, and/or coinsurance and deductibles available to those Members.

BCN removed the Petitioner and his spouse from the HLP as of July 1, 2010, when they failed to meet certain requirements in the rider by the June 30, 2010, deadline. As a result, they were placed in the standard benefits plan (which has higher out-of-pocket expenses) from July 1 through July 31, 2010, their final month of coverage with BCN.

The Petitioner appealed his termination from the HLP through BCN's internal grievance process and received the October 19, 2010 final adverse determination letter. He seeks a review of that adverse determination from the Commissioner.¹

III. ISSUE

Did BCN properly deny the Petitioner continued participation in the HLP?

¹ The request for external review was submitted only for the Petitioner. His spouse, however, apparently also went through respondent's internal grievance process for the same complaint.

IV. ANALYSIS

Petitioner's Argument

The Petitioner is requesting to be restored to the HLP for the month of July 2010. In a letter dated September 25, 2010, his spouse wrote to BCN:

The denial of [our] request is based only on the premise that we failed to complete the on-line Health Assessment and Health Qualification forms by the due date of June 30, 2010. It would appear that the Grievance Coordinator . . . accepts the fact that 1/. we had selected a BCN, PCP and 2/. That we had adopted or actively maintained a healthy lifestyle and that we were non-smokers.

In my original request I had also advised because of many days on medical leave and being recently assigned to two different work sites in two separate cities I was not really certain of when I received the enrollment documents or whether I ever received them. . . .

Nevertheless it is requested that since the period involved is a mere one month—finally retired on July 09, 2010—the grievance request be granted even if an ex post facto completion of the HBL, HA and HQF may be required.

The Petitioner is requesting to be restored to the HLP from July 1 through July 31, 2010.

Respondent's Argument

In its October 19, 2010, final adverse determination (addressed to the Petitioner's spouse), BCN declined to restore the Petitioner to the HLP:

. . . The [grievance] Panel has maintained the denial as both you and your husband's due date of June 30, 2010, to submit the necessary on-line forms (Health Assessment) and Health Qualification Form (HQF) forms to Blue Care Network, was not met. Therefore, you would be responsible for the copayments and co-insurances that apply to all your claims under the standard benefits for the members on your contract from July 1, 2010 to July 31, 2010.

Additionally, per your correspondence received on October 4, 2010, you asked for information on when you received the enrollment documentation for the [HLP]. Our records indicate the enrollment packet was mailed to the [Petitioner's] address on April 2, 2010. Also, a reminder letter was mailed to you on May 7, 2010.

BCN contends that its decision to remove the Petitioner from the HLP was consistent with the terms of the rider.

Commissioner's Review

Health maintenance organizations are permitted to offer wellness programs like BCN's HLP which provide for reduced copayments, coinsurance, or deductibles if certain conditions are met.² As a condition of remaining in the HLP, a BCN member must meet requirements specified in the rider. The rider says:

HOW TO EARN THE HEALTHY LIVING ENHANCED BENEFITS IN THE FIRST YEAR OF ENROLLMENT

Upon enrollment each Healthy Living Eligible Member will receive Enhanced Benefits for a 90-day period. To continue receiving the Enhanced Benefits each Healthy Living Eligible Member must take the following steps:

1. Within 90 days of enrollment each Healthy Living Eligible Member must complete a Health Risk Assessment (HRA) and a Healthy Living Enrollment Form which will assess the Member's medical condition and/or lifestyle behavior in relation to the following areas:
 - Blood pressure
 - Smoking
 - Cholesterol
 - Blood sugar
 - Weight
 - Alcohol use
2. In order to earn Enhanced Benefits, Healthy Living Eligible Members must achieve a score of 80 points or more on the Healthy Living Enrollment Form. . . . The results must be submitted to BCN within the 90-day time period.

The Petitioner was conditionally enrolled in the HLP from April 1 through June 30, 2010, but he failed to submit his Health Risk Assessment (HRA) and Healthy Living Enrollment forms by the June 30, 2010, deadline. As a result, the Petitioner was removed from the HLP on July 1, 2010.

There is no dispute in the record that the necessary forms were not submitted on time. BCN states they were never received and that it provided reminders to the Petitioner on April 2 and May 7, 2010. The Petitioner tacitly acknowledges that the forms were not submitted; he

² See MCL 500.3426.

only expressed concern that there had been no reminder about the deadline and did not recall receiving any information.³

From this record, the Commissioner can only conclude that the Petitioner did not meet the requirements of the rider to continue his participation in the HLP and therefore BCN had cause to remove him from the program.

V. ORDER

The Commissioner upholds BCN's October 19, 2010, final adverse determination. BCN is not required to restore the Petitioner to the HLP for the period July 1 through July 31, 2010.

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.

R. Kevin Clinton
Commissioner

³ Nothing in the rider requires BCN to provide reminders.