

**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**

**File No. 118632-001**

**v**

**Blue Care Network of Michigan**  
**Respondent**

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**Issued and entered**  
**this 19<sup>th</sup> day of July 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On December 17, 2010, 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 December 22, 2010, after a preliminary review of the material submitted the Commissioner accepted the case for external review.

Since the case presented a medical question, the Commissioner assigned the matter to an independent medical review organization which submitted its recommendation on January 5, 2011.

**II. FACTUAL BACKGROUND**

The Petitioner is a member of Blue Care Network (BCN). Her health care benefits are defined in the Blue Care of Michigan, Inc., *Personal Plus* certificate of coverage (the certificate).

In September 2009, Petitioner was referred by her primary care physician to Dr. XXXXX for treatment of infertility. In January 2010, Dr. XXXXX met with Petitioner and her husband and discussed infertility treatments. At that time, Dr. XXXXX also recommended Petitioner undergo a laparoscopy, given Petitioner's history of dysmenorrhea and abdominal discomfort.

On February 11, 2010, the laparoscopy was performed. Charges for the surgery, submitted by four providers, totaled \$21,712.80. BCN initially provided coverage but later

concluded that the surgery was related to infertility treatment and, as such, was not a covered benefit.

Petitioner appealed BCN's decision to deny coverage. At the conclusion of BCN's internal grievance process the Petitioner received BCN's final adverse determination dated October 28, 2010.

### **III. ISSUE**

Did BCN properly deny the Petitioner coverage for the laparoscopy procedure under the terms of the certificate?

### **IV. ANALYSIS**

#### Petitioner's Argument

In her request for external review Petitioner wrote:

. . . My laparoscopy was done for my dysmenorrhea and endometriosis and hydatid cyst. . . . Prior authorization was obtained prior to my surgery being done. I would never have had the surgery if wasn't going to be paid. Benefits were verified and authorization was obtained and now Blue Care Network is denying all of my claims. I have gone through their grievance process with no satisfaction!!

In an October 13, 2010, letter Petitioner's physician stated that the laparoscopy procedure was necessitated by Petitioner's increasing dysmenorrhea and lower abdominal discomfort.

Petitioner argues the treatment was medically necessary and not related to infertility treatment, therefore, BCN should provide coverage for the services.

#### Respondent's Argument

In its October 28, 2010, final adverse determination, BCN stated that "the services were related to the preparation for infertility services, which are not a benefit of the *Personal Plus* certificate."

Regarding Petitioner's statement that approval for the procedure had been granted, BCN wrote in its October 5, 2010 internal grievance ruling:

Per your submitted correspondence, you indicated that a pre-approval was obtained for the indicated service date. The requested procedure in itself is a benefit and that is why the referral was granted. On a semi-annual basis, our Corporate Recovery department completes a Personal Plus claims audit to identify paid claims that are related to a pre-existing condition or a benefit exclusion of your certificate. Upon review of medical records in March 2010 and again now, it was determined that your February 11, 2010 service was infertility in nature as well. Your claims have been denied payment or payment recovery has been initiated because of a benefit exclusion not because of a pre-existing waiting period clause.

BCN argues that its decision to deny coverage for the laparoscopy was in compliance and was appropriate under the terms of the certificate.

#### Commissioner's Review

BCN provides coverage for medical services which are medically appropriate and which are listed as covered benefits in the applicable certificate. Additionally, sections 10.03 and 10.14 of the certificate provide:

#### **10.03 SERVICES WHICH ARE NOT MEDICALLY NECESSARY**

Except as expressly provided in the Certificate, services which are not medically necessary are not covered. The final determination of medical necessity is the judgment of the Plan Physician with concurrence of the Blue Care of Michigan, Inc. Medical Director.

#### **10.14 SPECIAL ELECTIVE PROCEDURES**

There is no coverage under this Certificate for any of the following:

1. Surgical sterilization or reversal of a surgical sterilization.
2. Diagnosis, testing, or treatment for infertility.
3. In-vitro fertilization, gamete or embryo transfer procedures, and any other similar types of procedures whether or not considered investigational or experimental.
4. Artificial insemination.
5. All services related to surrogate parenting arrangements of any kind.
6. Transsexual surgery and related preparatory treatment.
7. Radial keratotomy.

In order to resolve the question of whether Petitioner's laparoscopy was related to infertility treatment, the Commissioner requested analysis by an independent review organization (IRO). The review was conducted by a physician in active practice who is board certified in obstetrics and gynecology and board eligible in reproductive endocrinology/infertility. The

reviewer has a special certification in advanced endoscopy and hysteroscopy, and is published in peer-reviewed medical literature. The IRO reviewer's report includes these comments:

The services on February 11, 2010 appear to be part of the ongoing evaluation and treatment for infertility. This is primarily the case as prior to January of 2010 office visit, there is no mention of dysmenorrhea, attempted treatments and at that visit, fertility treatment was recommended.

While laparoscopy may be an appropriate consideration as part of the evaluation of infertility, it is unclear that laparoscopy was appropriate for the diagnosis 617.3 peritoneal endometriosis without a trial of oral contraceptives and documentation of an ongoing issue with pelvic pain. A trial of oral pain medications is warranted prior to consideration of pelvic pain. Many women suffer from pelvic pain, and a great many visit their family doctor for diagnosis and treatment. Two common causes are primary dysmenorrhea and endometriosis. Primary dysmenorrhea is best treated by prostaglandin inhibition from nonsteroidal anti-inflammatory drugs (NSAIDs) and cyclo-oxygenase-2 (COX-2)-specific inhibitors. Oral contraceptives can be added to improve pain control. Endometriosis can be treated with NSAIDs and COX-2 specific inhibitors as well but can also be treated with hormonal manipulation or surgery. Empiric treatment for endometriosis in selected patients is now accepted, making the disorder easier for family physicians to manage.<sup>1</sup>

"Surgery constitutes the final diagnostic and therapeutic option in the management of dysmenorrhea. Laparoscopy should be considered in women who have persistent dysmenorrhea despite medical therapy of NSAIDs and/or oral contraceptives."<sup>2</sup> This obviously does not apply in this case. There is no documentation to support dysmenorrhea as an ongoing and serious concern. No mention is made of attempts to treat dysmenorrhea in the patient. And, one can only conclude that the primary reason for surgery was as part of her fertility treatment.

\* \* \*

1. Nasir L, Bope ET. Management of Pelvic Pain from Dysmenorrhea or Endometriosis. The Journal of the American Board of Family Practice. 17:S43-S47 (2004)

2. Antao V, Black A, et al. Primary Dysmenorrhea Consensus Guideline. <http://www.sogc.org/guidelines/public/169E-CPG-December2005.pdf>

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’s analysis is based on extensive experience, expertise and professional judgment. The Commissioner can discern no reason why the IRO’s recommendation should be rejected in the present case.

The Commissioner finds that BCN’s denial of coverage for the laparoscopy procedure was consistent with the terms of the certificate.

**V. ORDER**

The Commissioner upholds BCN’s October 28, 2010, final adverse determination. BCN is not required to provide coverage for the laparoscopy performed on February 11, 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.

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R. Kevin Clinton  
Commissioner