

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. 118663-001-SF

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 19th day of July 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On December 21, 2010, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits as an eligible dependent under her husband's group coverage through the City of Livonia, a self-funded group. Blue Cross Blue Shield of Michigan (BCBSM) administers the benefit plan for the XXXXX. Petitioner's benefits are defined in the BCBSM *Blue Choice Preferred Provider Organization Managed Health Care Group Benefits Certificate* (the certificate).

The Commissioner reviewed the material submitted and accepted Petitioner's request on January 3, 2011. Because it involved medical issues, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations on January 18, 2011.

II. FACTUAL BACKGROUND

On March 30, 2010, the Petitioner went to XXXXX Hospital in XXXXX because she was suffering from severe depression. She was admitted as an inpatient then discharged on March 31 to outpatient care. The amount charged for the inpatient care was \$2,759.85. BCBSM denied coverage, ruling that inpatient care was not medically necessary since Petitioner could have been treated in a less intensive setting.

The Petitioner appealed the denial of coverage through BCBSM's internal grievance process. After a managerial-level conference on October 13, 2010, BCBSM did not change its decision and issued a final adverse determination dated October 20, 2010.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's March 30, 2010 inpatient treatment?

IV. ANALYSIS

Petitioner's Argument

The Petitioner states that she was admitted into the mental health unit of the hospital and given anxiety medication and anti-depressants at the maximum dosage. She believes this treatment was medically necessary and a covered benefit under her BCBSM certificate. She argued that she would not have survived if she had not gone to the hospital.

BCBSM's Argument

BCBSM denied coverage for the care at XXXXX's, stating that the Petitioner's condition and the level of services provided did not meet BCBSM's criteria for payment of inpatient benefits. In its final adverse determination, BCBSM wrote:

. . . Based on a thorough review of the documentation received . . . [it] is our medical position that [Petitioner] could have been safely treated in an alternative setting.

To ensure that all possible consideration was given, however, we forwarded [Petitioner's] records to an independent, external review board for evaluation. . . . [T]he board agreed with our decision that an inpatient setting was not warranted.

Commissioner's Review

Section 3 of the certificate, "Coverage for Hospital, Facility and Alternatives to Hospital Care," provides:

For covered services to be payable they must be **medically necessary** . . .

Note: Medically necessary services that can be provided safely in an outpatient or office location are not payable when provided in an inpatient setting.

The question of whether the Petitioner's inpatient care at St. Mary's was medically necessary was presented to an independent medical review organization (IRO) for analysis, as required by section 11(6) of the Patient's Right to Independent Review Act. The IRO reviewer is a physician in active clinical practice certified by the American Board of Psychiatry and Neurology with a subspecialty in psychiatry and adult psychopharmacology. The reviewer is an assistant clinical professor of psychiatry at a university-based school of medicine and a member of the American Psychiatric Association. The IRO reviewer's report included this analysis:

The enrollee was described as anxious and depressed in the ER. There was no evidence of suicidal or homicidal ideation. The enrollee was described as cooperative. There was no evidence of agitation, disorganization, or other psychotic signs or symptoms. There was no documented evidence of a self-care deficit. Physical examination and laboratory studies were normal. There is no evidence in the record that a psychiatric consultation was sought or obtained prior to admission to an inpatient unit. The enrollee had a supportive and involved husband.

The American Psychiatric Association practice guidelines state, "Patients who exhibit suicidal or homicidal ideation, intention, or a plan require close monitoring. Hospitalization is usually indicated for patients who are considered to pose a serious threat of harm to themselves or others . . . Severely ill patients who lack adequate social support outside of a hospital setting should be considered for admission to a hospital or intensive day program."

Inpatient mental health services were not medically necessary. The enrollee could have been observed in the ER setting and referred to a lower level of care such as a partial hospital program.

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 extensive 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, under the terms of the certificate, BCBSM correctly denied coverage for the Petitioner's inpatient care at XXXXX hospital.

V. Order

The Commissioner upholds BCBSM's October 20, 2010, final adverse determination.

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, P.O. Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner