

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

v

File No. 118500-001

Blue Cross and Blue Shield of Michigan
Respondent

_____ /

Issued and entered
this 25th day of July 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On December 9, 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.* The Commissioner reviewed the request and accepted it for external review on December 14, 2010.

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Office of Financial and Insurance Regulation received BCBSM's response on January 4, 2011.

The issue in this external review can be decided through a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's group health care coverage is defined in the BCBSM *Community Blue Group Benefits Certificate* (the certificate). Rider CNM Certified Nurse Midwife (the rider), also applies.

On April 15, 2010, the Petitioner had a normal vaginal delivery at the XXXXX performed by a certified nurse midwife. The charge for the delivery was \$1,675.00. XXXXX is not a BCBSM participating provider. BCBSM denied coverage for the delivery on the basis that it is payable only when provided at an inpatient hospital setting or at a birthing center which is hospital affiliated, state licensed, and accredited as defined and approved by BCBSM.

The Petitioner also received pre- and post-natal care at XXXXX and objects to the amount that BCBSM paid for those services.

The Petitioner appealed BCBSM's handling of her claims. BCBSM held a managerial-level conference on October 13, 2010, and issued a final adverse determination dated October 15, 2005. The Petitioner exhausted BCBSM's internal grievance process and seeks review by the Commissioner.

III. ISSUE

Is BCBSM required to pay for midwife services related to the April 15, 2010, birth at XXXXX?

IV. ANALYSIS

Petitioner's Argument

Section 416d of the Nonprofit Health Care Corporation Reform Act, MCL 550.1416d, requires BCBSM to "include coverage for obstetrical and gynecological services . . . performed by a . . . nurse midwife acting within the scope of his or her license." The Petitioner argues that this statutory mandate is superior to the certificate and rider and should control disposition of this review.

The Petitioner also believes that the statute does not require hospital affiliation or other

reasons BCBSM cited for denying her claims. She indicates that her insurance plan does not have a copayment or deductible and therefore, under state law, BCBSM should cover 100 percent of her pre-natal, post-natal, and maternity care.

The Petitioner also does not believe that BCBSM's partial payment for pre- and post-natal care satisfies the requirement of state law.

BCBSM's Argument

BCBSM states it pays its approved amount for normal vaginal delivery services provided by a certified nurse midwife when the delivery is provided in "an inpatient hospital setting or a birthing center which is hospital affiliated, state licensed and accredited as defined and approved by BCBSM." Since XXXXX is not a hospital, hospital affiliated, or accredited and approved by BCBSM, the Petitioner's delivery is not a covered benefit under the contract language. BCBSM further states the Petitioner was told on November 20, 2009, that XXXXX was not a participating facility and that the delivery would not be reimbursed.

It also pays its approved amount for pre- and post-natal care provided by a certified nurse midwife. Rider CNM defines "approved amount" as "the lower of the billed charge or [the BCBSM] maximum payment level for the covered service." BCBSM indicates that it paid a total of \$1,292.98¹ for the pre- and post-natal care, the maximum payment level and, therefore, its approved amount.

BCBSM asserts that it was correct in denying the Petitioner's midwife delivery and that its payment for pre- and post-natal care was in compliance with the certificate.

Commissioner's Review

The certificate and applicable riders describe how benefits are paid. Since the Petitioner's delivery was not provided in an inpatient hospital setting and the XXXXX is not a BCBSM-affiliated facility, the delivery is not a covered benefit under the certificate or the rider.

¹ XXXXX's charge was \$2,125.00.

The Petitioner argued that Section 416d of the Nonprofit Health Care Corporation Reform Act requires BCBSM to pay for her midwife care. That section states:

(1) As used in this section, "nurse midwife" means an individual licensed as a registered professional nurse under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, who has been issued a specialty certification in the practice of nurse midwifery by the Michigan board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210.

(2) Effective March 1, 2005, a group or nongroup certificate that provides coverage for obstetrical and gynecological services shall include coverage for obstetrical and gynecological services whether performed by a physician or a nurse midwife acting within the scope of his or her license or specialty certification or shall do 1 or both of the following:

(a) Offer to provide coverage for obstetrical and gynecological services whether performed by a physician or a nurse midwife acting within the scope of his or her license or specialty certification.

(b) Offer to provide coverage for maternity services and gynecological services rendered during pre- and post-natal care whether performed by a physician or a nurse midwife acting within the scope of his or her license or specialty certification.

This language does not prevent BCBSM from establishing criteria for providers, such as requiring a birthing center to be hospital affiliated. Section 416d also does not require BCBSM to pay 100% of the amount charged for covered services.

The pre- and post-natal care was covered at BCBSM's maximum allowable amount. The language of the certificate and rider are clear: BCBSM is only required to pay its approved amount for a covered service. The certificate and the rider define "approved amount" as "the lower of the billed charge or [BCBSM] maximum payment level for the covered service." Since BCBSM's maximum amount for pre- and post-natal care was less than the provider's charge, it has paid its approved amount for those services.

The Commissioner finds that BCBSM correctly applied the provisions of the Petitioner's certificate and rider when it denied payment for the Petitioner's delivery and paid its maximum payment amount for the pre- and post-natal care provided by a nurse midwife.

V. ORDER

BCBSM's final adverse determination of October 15, 2010, is upheld. BCBSM is not

required to pay an additional amount for the midwife services Petitioner received.

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 the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner