

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. 117901-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 3rd day of August 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On February 1, 2011, 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 material submitted and accepted the request on February 8, 2011.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information it used in making its adverse determination. The Commissioner received BCBSM's response on February 11, 2011.

Since this case involved medical issues, the Commissioner assigned it to an independent review organization which provided its analysis and recommendation on February 17, 2011.¹

¹ On July 11, 2011, the IRO submitted an amended report that clarified the medical procedure the Petitioner underwent but did not change the original recommendation.

II. FACTUAL BACKGROUND

The Petitioner receives group health care benefits through the Michigan Education Special Services Association (MESSA), a plan underwritten by BCBSM. His benefits are defined in a document entitled *MESSA Choices II Group Insurance for School Employees* (the benefit guide).

The Petitioner had a history of seizures and headaches and was discovered to have an unruptured left internal carotid artery aneurysm. He underwent endovascular treatment, which included placement of a stent, on October 13, 2008. BCBSM denied coverage for the treatment on the basis that it was experimental or investigational for his condition.

The Petitioner appealed BCBSM's denial of coverage for his medical procedure. After a managerial-level conference on November 9, 2010, BCBSM upheld its original decision and issued a final adverse determination dated December 16, 2010.

III. ISSUE

Is BCBSM required to provide coverage for the medical treatment Petitioner underwent on October 13, 2008?

IV. ANALYSIS

Petitioner's Argument

The Petitioner argues that the transcatheter placement of an intravascular stent was medically necessary and therefore BCBSM is required to cover it.

BCBSM's Argument

In its December 16, 2010, final adverse determination, BCBSM explained:

. . . We are unable to allow payment for the procedure under appeal, because it is investigational. Investigational procedures are not a benefit of your contract.

Our records indicate that you received transcatheter placement of an intravascular stent, intracranial, including balloon angioplasty. Early medical data about this procedure showed promise, but the current medical literature does not support these treatments. Therefore, this procedure is considered to be investigational under the terms of your contract.

You are covered under the *MESSA Choices II Group Health Insurance for School Employees*. The term 'experimental' is defined in the Benefit Guide in Section 1: The Language of Health Care as "A service that has not been scientifically demonstrated to be as safe and effective for treatment of the patient's condition as conventional or standard treatment." In Section 10: Exclusions and Limitations it is explained that "services and supplies that are not medically necessary according to accepted standards of medical practice including any services which are experimental or investigational" . . . are an exclusion and/or limitation of your MESSA Choices II program.

BCBSM maintains that it correctly applied the terms of Petitioner's certificate in denying coverage for Petitioner's October 13, 2008 treatment.

Commissioner's Review

Because experimental and investigational procedures are excluded from coverage in the benefit guide, the question of whether the Petitioner's October 13, 2008, treatment was investigational was submitted to an independent review organization (IRO) for analysis as required by MCL 550.1911(6).

The IRO reviewer is a physician who is certified by the American Board of Radiology (with subspecialties in diagnostic radiology and neuroradiology) and is in active clinical practice. The IRO reviewer's report included this analysis:

The [Petitioner] did not undergo angioplasty. The [Petitioner] underwent an endovascular treatment of an internal carotid artery aneurysm, placement of a stent. There are multiple peer review articles stating that endovascular treatment including stent placement is an alternative to surgical treatment for patients with cerebral aneurysms. This is not an experimental treatment in this [Petitioner] based on the clinical information provided.

* * *

. . . Treatment of intracranial aneurysm with endovascular techniques is currently held as the standard of care in the vascular surgery and interventional radiology communities.

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 accepts the IRO’s recommendation and finds that the treatment the Petitioner received on October 13, 2008, was not experimental or investigational for his condition and BCBSM’s denial of coverage was therefore inconsistent with the terms of the benefit guide.

V. ORDER

The Commissioner reverses BCBSM’s December 16, 2010, final adverse determination. BCBSM shall provide coverage for Petitioner’s October 13, 2008, treatment within 60 days of the date of this Order and shall, within seven days of providing coverage, provide the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

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

R. Kevin Clinton
Commissioner