

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. 119260-001

v

Blue Cross Blue Shield of Michigan
Respondent

_____ /

Issued and entered
this 4th day of August 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On January 26, 2011, XXXXX, authorized representative of 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 on February 3, 2011.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on February 14, 2011.

The Petitioner receives health care benefits as an eligible dependent under her mother's coverage through the XXXXX. The coverage is underwritten by BCBSM. The Petitioner's benefits are defined in the XXXXX (the benefit guide). The issue in this external review can be decided by 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

On July 12, 2010, the Petitioner asked for authorization for orthodontia treatment (braces) prior to proposed jaw surgery. BCBSM denied authorization, stating that dental braces are not a covered benefit under the benefit guide.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference on November 15, 2010, and issued a final adverse determination dated December 3, 2010, upholding the denial.

III. ISSUE

Is BCBSM required to authorize and cover the Petitioner's orthodontia care?

IV. ANALYSIS

Petitioner's Argument

The Petitioner was born with a severe jaw deformity. Her oral surgeon recommended surgery on both jaws because of the disparity in the size of the top and bottom jaws; their alignment was such that only two of her teeth touched.

The oral surgeon also indicated that braces would be required to attach to the jaw bones that would have to be sectioned during surgery, and that the braces would hold the bones in place until they are healed. The Petitioner believes that braces are not "dental care" but an important component needed to correct the Petitioner's jaw deformity.

The Petitioner argues that since her dental braces are part of her jaw surgery they should be a covered benefit and BCBSM should authorize and cover them.

BCBSM's Argument

BCBSM argues the Petitioner's medical coverage includes only very limited dental services and that dental braces are not covered. BCBSM cites the following exclusion (in "Section 10: Exclusions and Limitations") of the benefit guide:

The following exclusions and limitations apply to the XXXXX program. These are in addition to limitations appearing elsewhere in this coverage booklet.

* * *

- dental care (except as previously specified) including repairs of supporting structures for partial or complete dentures, dental implants, extractions, extraction repairs, bite splints, braces and appliances and other dental work or treatment.

The benefit guide does contain limited dental coverage (p. 44 under “Section 8: Other Covered Health Care Services”):

This section describes coverage for other health care services in addition to your facility and physician services.

Dental Services

Dental treatment by a licensed dentist or dental surgeon required because of an accidental injury to sound natural teeth sustained while covered by this plan and only if coverage has been continuous since the date of the accidental injury. Charges by a dental surgeon for the removal of cysts and tumors of the mouth and jaw, and the extraction of impacted teeth are covered.

BCBSM states the Petitioner’s condition did not arise out of an accidental injury so this provision does not apply.

BCBSM does not doubt that the Petitioner’s braces are necessary. However, under the terms of the benefit guide, braces are specifically excluded and BCBSM believes it is not required to cover them.

Commissioner’s Review

The Petitioner’s XXXXX coverage is primarily for medical, not dental, services. Dental care is only covered in very limited circumstances - - for treatment “required because of an accidental injury to sound natural teeth.” The Petitioner did not have an accidental injury to sound natural teeth so dental coverage is not available to her under the XXXXX plan.

Moreover, the benefit guide specifically excludes dental braces from coverage. The Commissioner finds no exception in the certificate that would provide coverage for the Petitioner’s braces, even if the need arose from a medical condition and was medically necessary. Medical

necessity alone is not determinative of coverage - - the care must also be a benefit under the terms of the health plan. In this case, braces are not a covered benefit.

The Commissioner understands the Petitioner's need for dental braces as part of her treatment plan. Unfortunately, her XXXXX medical coverage does not include braces. The Commissioner concludes that BCBSM's denial is consistent with the terms of the benefit guide.

V. ORDER

BCBSM's final adverse determination of December 3, 2010, is upheld. BCBSM is not required to preauthorize or cover the Petitioner's dental braces.

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