

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. 119458-001

v

Blue Care Network of Michigan
Respondent

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

ORDER

I. BACKGROUND

On February 7, 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.* On February 14, 2011, after a preliminary review of the material submitted, the Commissioner accepted the case.

Since the case presented a medical question, the Commissioner assigned the matter to an independent review organization which submitted its recommendation on February 28, 2011.

II. FACTUAL BACKGROUND

The Petitioner is a member of Blue Care Network (BCN), a health maintenance organization. Her health care benefits are defined in the BCN 5 Certificate of Coverage (the certificate).

On October 14, 2010, the Petitioner had a laparoscopic procedure and related services. BCN covered the procedure but applied a 50% coinsurance, indicating the treatment was for infertility.¹

The Petitioner appealed the application of the 50% coinsurance through BCN's internal grievance process. BCN upheld its original denial and sent the Petitioner its final adverse determination dated January 7, 2011.

III. ISSUE

Did BCN properly determine the services were related to infertility when it applied the 50% coinsurance?

IV. ANALYSIS

Petitioner's Argument

In her February 7, 2011, letter to OFIR, the Petitioner explained:

Shortly after I had my surgery on October 14, 2010 I received a bill from the anesthesiologist, Dr. XXXXX, and XXXXX Hospital for 50% coinsurance. Upon receipt of those invoices, I contacted BCN and spoke with a representative who advised me that she would have my claim reprocessed as it appears that it should have been covered at 100% and was unsure why the 50% coinsurance was applied. . . .

. . . The preoperative diagnoses are: cervical stenosis, dysmenorrheal, and possible endometriosis. The postoperative diagnoses are: cervical stenosis, dysmenorrheal, endometriosis, pelvic adhesions, and fibroid uterus. I have also confirmed with Dr. XXXXX's office that endometriosis is NOT considered infertility diagnosis pursuant to BCN's codes.

It is clear that BCN made its coverage determination solely based on the procedures and the endometriosis diagnosis without regard for the necessity of the surgery based on reasons/diagnoses not related to fertility issues. Rather BCN relied on the fact that the doctor specializes in infertility (despite the fact that Dr. XXXXX does provide services that are non-fertility related), the procedures performed, and the diagnosis of endometriosis (despite the fact that the reason for the surgery was for dysmenorrheal). . . .

¹ According to the three explanation of benefits statements dated January 10, 2011, BCN's total approved amount for the care was \$4,135.35. The Petitioner's 50% coinsurance was \$2,067.67.

The Petitioner argues that treatment was medically necessary and not related to infertility treatment. Therefore, she does not believe the 50% coinsurance should apply.

Respondent's Argument

BCN notes that infertility services are covered but are subject to 50% coinsurance. The certificate states (p. 5):

1.09 Reproductive Care and Family Planning Services

This benefit includes:

- Infertility

* * *

- a. Infertility

We cover diagnosis, counseling and treatment of infertility except as stated below and in Section 2.13. Following the initial sequence of diagnostic work-up and treatment, additional work-ups and treatment may begin only when BCN determines they are in accordance with generally accepted medical practice.

Copayment:² 50% of all fees associated with infertility diagnostic work-up procedures and treatment, including prescription drugs and all facility, professional related services.

BCN argues that its application of the 50% coinsurance for infertility treatment was in compliance with the terms of the certificate.

Commissioner's Review

BCN provides coverage for services when they are medically appropriate and listed as a covered benefit in the certificate. In this case, BCN covered the laparoscopy procedure but applied 50% coinsurance because it was infertility treatment.

The question of whether the Petitioner's laparoscopic procedure was infertility treatment was presented to an independent review organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO

² Under Section 3515 of the Insurance Code, MCL 500.3515, "copayment" is stated as a dollar amount and "coinsurance" is stated as a percentage. BCN uses the terms interchangeably here.

reviewer is a physician who is board certified in obstetrics and gynecology; is board eligible in reproductive endocrinology/infertility; has special certification in advanced endoscopy and hysteroscopy; and is in active clinical practice. The IRO reviewer's report includes the following analysis and conclusion:

Based on the very limited medical records submitted for review, there is no evidence to suggest other than preoperative diagnosis (Possible Endometriosis, Cervical Stenosis and Dysmenorrhea). A determination cannot be made that the stated diagnoses, the basis for the surgery, were present and appropriately evaluated prior to the surgical intervention. Without sufficient medical records a determination of the basis for the care provided cannot be made. There is no information provided that supports any surgical treatment.

This treatment was most likely performed for endometriosis however, the lack of medical records preceding the decision to perform surgery make it impossible to make a determination. The fact that a tubal chromotubation (an infertility procedure) was carried out and that chromotubation is not part of diagnosing or treating the other listed conditions, it would seem that this procedure was performed primarily because the enrollee desired pregnancy.

Medical records are insufficient to support that this treatment was not part of the patient's overall fertility treatment.

Recommendation

It is the recommendation of this reviewer that the denial of coverage issued by Blue Care Network of Michigan for services rendered on October 14, 2010 be upheld.

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 accepts the IRO conclusion that the procedure on October 14, 2010, was for infertility and finds that BCN's decision to apply the 50% coinsurance was consistent with the terms of the certificate.

V. ORDER

The Commissioner upholds BCN's January 7, 2011, final adverse determination. BCN correctly applied the 50% coinsurance to the Petitioner's October 14, 2010, laparoscopy procedure.

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