

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX
Petitioner

v

File No. 119284-001

Blue Cross and Blue Shield of Michigan
Respondent

Issued and entered
this 22nd day of August 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On January 27, 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 (PRIRA), 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. BCBSM's response was received on February 14, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Group Conversion Comprehensive Health Care Benefit Certificate* (the certificate). 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 had allergy tests and a related office consultation. BCBSM denied coverage, indicating the services were not a benefit under the certificate.

The Petitioner appealed BCBSM's denial through its internal grievance process. BCBSM held a managerial-level conference on November 29, 2010, and issued a final adverse determination dated December 1, 2010.

III. ISSUE

Is BCBSM required to pay for the Petitioner's allergy testing?

IV. ANALYSIS

Petitioner's Argument

The Petitioner experienced several acute anaphylactic reactions during the spring and summer of 2010. The cause of the reactions was unknown. Concerned about her safety and the risk of a life-threatening reaction, the Petitioner's physician felt it was medically necessary for her to have a thorough evaluation by an allergy specialist. The Petitioner had the diagnostic allergy tests performed and an office consultation on July 7, 2010.

The Petitioner believes that her allergy tests should be covered as a diagnostic service under the certificate. She states BCBSM could not point to any provision in the certificate which excludes allergy testing as a covered benefit.

The Petitioner believes the allergy tests and consultation were medically necessary and that BCBSM is required to cover this care.

BCBSM's Argument

The certificate states in "Section 5: General Conditions of Your Contract," (p. 5.1) that BCBSM does not pay for "any services not listed in this certificate as being payable." It is BCBSM's position, as explained in its adverse determination, that allergy testing is excluded from coverage because it is not specifically listed in the certificate under diagnostic services.

BCBSM believes it has correctly denied payment for the allergy services in accordance with the terms of the certificate.

Commissioner's Review

In "Section 3: Coverage for Physician and Other Professional Provider Services," (p. 3.10) the certificate contains the following provisions:

Diagnostic Services

We pay for diagnostic services used by a physician to diagnose disease, illness, pregnancy or injury.

- Physician services are payable for tests such as:
 - Thyroid function
 - Electrocardiogram (EKG)
 - Electroencephalogram (EEG)
 - Pulmonary function studies
- Physician and independent physical therapist services are payable for the following tests:
 - Electromyogram (EMG)
 - Nerve conduction

* * *

Diagnostic Laboratory and Pathology Services

We pay for laboratory and pathology exams needed to diagnose a disease, illness, pregnancy or injury. The services must be provided by your physician or by another physician or a laboratory if prescribed by your physician.

BCBSM believes that it is not responsible for the Petitioner's allergy tests and related services because allergy services are not specifically mentioned in the certificate. The Commissioner disagrees.

The certificate clearly covers diagnostic services, including diagnostic laboratory services. Under "Diagnostic Services," the certificate (p. 3.10) indicates that physician services "are payable for tests such as" and then a list of tests follows. The Commissioner interprets "such as" in the "for example" sense, i.e., the tests on the list are among those to be included for coverage but the list is

not exhaustive. Furthermore, the four tests shown are not so similar in nature that one would conclude that they constituted a discrete set that would reasonably exclude allergy tests. If the certificate had intended to limit diagnostic services to the four tests listed, it would have explicitly stated that fact.

BCBSM states that the certificate excludes coverage for “any services not listed in this certificate as being payable.” However, diagnostic tests are listed in the certificate under “Physician and Other Professional Provider Services That Are Payable.” Therefore, the Commissioner concludes and finds that the Petitioner’s allergy tests and office consultation of July 7, 2010, are covered under the certificate.

V. ORDER

BCBSM’s final adverse determination of December 1, 2010, is reversed. BCBSM shall cover the Petitioner’s allergy tests and office consultation, under the terms and conditions of the certificate, within 60 days of the date of this Order. BCBSM shall provide the Commissioner with proof of coverage within seven days after the coverage was provided.

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