

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

v

File No. 119967-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 23rd day of August 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On March 10, 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 March 17, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request.

The Commissioner notified Blue Care Network of Michigan (BCN) of the request and asked for the information it used to make its final adverse determination. The Commissioner received BCN's initial response on March 16, 2011, and additional information on March 28, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner has been a member of BCN since November 1, 2009. His health care benefits are defined in the *BCN 10 General Provisions* (the certificate). The *\$1,500/\$3,000 BCN10 Deductible Rider* (the rider) also applies. The rider establishes an annual individual deductible of \$1,500 for most covered services.

On June 8, 2010, the Petitioner had an echocardiogram (CPT code 93306). BCN's approved amount for this outpatient service was \$907.60 and that amount was applied to the Petitioner's individual deductible. The Petitioner disputes BCN's application of the deductible.

The Petitioner appealed the determination through BCN's internal grievance process. At the conclusion of that process, BCN maintained its denial and issued a final adverse determination dated February 7, 2011.

III. ISSUE

Was BCN correct when it applied its allowed amount for the Petitioner's echocardiogram to his deductible?

IV. ANALYSIS

BCN states that it applied its approved amount for the echocardiogram to the Petitioner's annual deductible because it was not a "preventive" service. Under the terms of the rider, the deductible applies to most covered services but not preventive services.¹ The rider states:

DEFINITION:

DEDUCTIBLE means the amount the member must pay before Blue Care Network (BCN) will pay for Covered Services under the "Your Benefit" section of the Member Certificate.

The **Deductible** is applicable to all Covered Services except:

1. Preventive Services (section 1.08)
2. Office Visits provided by the Member's Primary Care Physician (section 1.02a)
3. Routine Maternity Care (section 1.02b)
4. Allergy Shots (section 1.02e)
5. Urgent Care Services (section 1.05)
6. Laboratory, Pathology Tests, Mammography Screening, Bone Density Screening, and Prenatal Ultrasound (sections 1.04 and 1.07)
7. Mental Health and Substance Abuse Services (sections 1.12 & 1.13)
8. Durable Medical Equipment (section 1.15)
9. Prosthetic, Orthotic, and Corrective Appliances (section 1.16)

¹ Health maintenance organizations like BCN are prohibited from requiring a deductible on preventive services, but not on diagnostic services. See MCL 500.3515(7).

DEDUCTIBLE AMOUNTS:

- \$1,500 per member
- \$3,000 per family (when two or more members are covered under one contract)

In its February 7, 2011, final adverse determination, BCN attempted to explain why the echocardiogram is not a preventive service and therefore subject to the deductible:

The [grievance] Panel . . . reviewed your grievance submissions, your Blue Care Network (BCN) 10 certificate of coverage and deductible rider. Based on this information, the Panel has maintained the denial. Therefore, you are responsible for the assessed deductible. . . .

To clarify further, an example of a preventative service is to receive an influenza vaccine. By receiving this vaccine, it helps to prevent the flu. As for your situation, a medical condition has already been determined, so, periodically, your physician instructs you to have a 2-D echocardiography to monitor the progression of your medical situation.

The Petitioner believes the echocardiogram was a preventive service. In an undated letter to the Office of Financial and Insurance Regulation, he indicated:

. . . My insurance provider is of the opinion the procedure is not preventative. I am of the opinion it is in fact preventative. For the past 10+ years I have had an annual 2D echocardiogram to monitor the size of my aortic root. It is currently dilated and at this time stable. But, if the root reaches a certain size, then I will be scheduled for surgery. The surgery is to prevent the root from rupturing. My insurance provider is of the opinion that this procedure IS NOT preventative in nature. They claim the medical condition already exists, when in fact it does not. The medical condition that currently exists is the dilated root. The medical condition the procedure is preventing, the RUPTURING of the root, has not yet occurred. I have tried to explain this to my provider without success. I am unsure why they do not think this procedure is preventative. As I have explained to them and now to you, it is clearly preventing the root from rupturing and therefore should be covered by them.

The certificate covers both diagnostic and preventive services (see sections 1.07 and 1.08 on p. 5). Diagnostic services are defined in the certificate as “laboratory, pathology and radiology services, and other procedures for the diagnosis or treatment of a disease, injury or

medical condition.”² The Petitioner’s annual echocardiogram falls under this definition. He has a known medical condition that is monitored annually in order to determine treatment.

Preventive services, on the other hand, are routine procedures performed to detect conditions not yet manifested so they may be treated early. Preventative health care services are “services designated to maintain an individual in optimum health and to prevent unnecessary injury, illness, or disability.”³ The Petitioner’s condition, i.e., dilated aortic root, cannot be prevented – it already exists. The echocardiogram serves to determine future treatment. Furthermore, an echocardiogram is not included in the list of preventive services in section 1.08 of the certificate.

The Petitioner has explained why he thinks the echocardiogram is preventive and in a sense he is correct: the echocardiogram may help his physicians to prevent medical harm. Nevertheless, its primary purpose is to guide treatment, not prevent a condition.

The Commissioner concludes and finds that the Petitioner’s annual echocardiogram is a diagnostic, not a preventive, service under the certificate and therefore is subject to the deductible.

V. ORDER

The Commissioner upholds BCN’s February 7, 2011, final adverse determination. BCN is not required to waive the deductible for the Petitioner’s echocardiogram.

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

² Section 1.07, p. 5.

³ MCL 500.3515(7).