

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of the Department of Insurance and Financial Services

In the matter of:

██████████
Petitioner

v

File No. 204084-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 14th day of November 2022
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On March 10, 2022, ██████████, authorized representative of ██████████ (Petitioner), filed with the Director of the Department of Insurance and Financial Services a request for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* Initially, the request was not accepted because the Petitioner had not been through BCBSM's internal grievance process. On October 6, 2022, the Director received additional information showing the internal process was complete, and on October 20, 2022, accepted the request for review. The request for review concerns the denial of facial feminization surgery.

The Petitioner receives health care benefits through Blue Cross Blue Shield of Michigan (BCBSM). Their benefits are described in BCBSM's *Simply Blue Group Benefits Certificate SG* (the certificate). The Director notified BCBSM of the external review request and asked for the information used to make its final adverse determination. BCBSM responded on October 31, 2022.

The Director assigned an independent review organization to analyze the medical issues in this appeal. The review organization submitted its report to the Director on November 3, 2022.

II. FACTUAL BACKGROUND

The Petitioner has gender dysphoria and has lived as a female since 2012. Her physician and nurse practitioner recommended facial feminization and voice feminization surgery for treatment of her condition and asked BCBSM to authorize coverage of the services. BCBSM denied the request, saying the

requested services are considered to be cosmetic, and therefore, are excluded under the terms of her coverage.

The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process, BCBSM issued a final adverse determination dated July 12, 2022, affirming its coverage denial. The Petitioner now seeks the Director's review of that final adverse determination.

III. ANALYSIS

Petitioner's Argument

In the request for review the Petitioner's authorized representative wrote:

... Blue Cross's decision should be overturned because under prevailing medical standards and according to BCBSM's own Medical Necessity Standard, facial feminization surgery is medically necessary treatment for {Petitioner's} gender dysphoria.

Facts and Procedural History

[The Petitioner] is a [REDACTED]-year-old transgender woman with a diagnosis of gender dysphoria.¹ [The Petitioner] was diagnosed with gender dysphoria in 2010.² In 2012, [The Petitioner] began both living as a woman and hormone replacement therapy under the care of her physician, [REDACTED].³

On January 27th, 2022, [The Petitioner] requested pre-authorization for facial feminization surgery ("FFS") to treat her gender dysphoria. FFS is a set of surgical procedures that alter typically male facial features to provide a more feminine appearance.⁴ FFS procedures can include common procedures like brow lift, rhinoplasty, cheek implantation, and lip augmentation.⁵ However, other procedures, including scalp advancement, frontal cranioplasty, and reduction mandibuloplasty are more unique to FFS.⁶ FFS is not an attempt "to convert the face into a that of a fashion model" but to better align facial features with the patient's gender identification.⁷ On March 8, 2022, BCBSM denied [Petitioner's] request for pre-authorization for facial feminization surgery as not medically necessary.⁸ Blue Cross stated the following reason for denying pre-authorization: "procedures for facial feminization are considered cosmetic and not medically necessary."⁹

On July 7, 2022, [The Petitioner] appealed BCBSM's denial, and included an additional provider letter stating that FFS is medically necessary to treat [Petitioner's] gender dysphoria, a literature review of the medical necessity of FFS, and a personal letter describing how her gender dysphoria impacts her activities of daily life.¹⁰ On July 12, 2022, BCBSM issued a final adverse determination upholding the denial of pre-authorization for facial feminization as not medically necessary.¹¹

Blue Cross again stated that the requested surgeries were "cosmetic" and "not medically necessary."¹² Blue Cross's decision to deny [the Petitioner's] pre-authorization request for facial feminization surgery is incorrect as facial feminization surgery is medically necessary under both the prevailing medical standards and BCBSM's own Medical Necessity Standard for the treatment of gender dysphoria

Blue Cross incorrectly denied [the Petitioner's] pre-authorization request for FFS to treat her gender dysphoria as cosmetic. Under the prevailing medical standards of care and [the Petitioner's] treating providers, FFS is medically necessary to treat her gender dysphoria. Therefore, we respectfully request that BCBSM's denial of pre-authorization for FFS be overturned, and BCBSM be compelled to cover the procedure.

Respondent's Argument

In its final adverse determination, BCBSM wrote:

This letter is in response to the appeal you submitted and will inform you of the outcome of your managerial-level conference conducted on July 6, 2022. The purpose of the conference was to discuss the denial of prior authorization for facial feminization surgery (a series of surgical procedures to alter typically male facial features to bring them closer in shape and size to typical female facial features), with the following procedure codes:

- 15824: Rhytidectomy, forehead (forehead lift)
- 21270: Augmentation, cheek bone (cheek implants)
- 15769: Grafting of autologous soft tissue, other, harvested by direct excision (eg, fat, dermis, fascia) (soft tissue harvesting)
- 14040: Skin tis renge, fhd/chk/chn/mth/nck/axil/gen/hnd/ft, 10 sq cm (hairline lowering)
- 31599: Larynx surgery procedure (voice feminization)
- 21137: Reduce forehead, recontouring (orbital bony contour)
- 21209: Reduction of facial bones (chin reduction and contour) - 30420: Rhinoplasty, primary and major septal repair (septorhinoplasty)
- 40799: Unlisted lip surgery procedure (lip lift)
- 15776: Hair transplant punch grafts, more than 15 (hair transplants)
- 15773: Grafting of autologous fat harvested by liposuction technique to face, eyelids, mouth, neck, ears, orbits, genitalia, hands, and/or feet; 25 cc or less injectate (grafting of fat)

As a Grievance and Appeals Coordinator, I reviewed your appeal about the denial of prior authorization and your plan benefits. You are covered under the *Simply Blue Group Benefits Certificate* SG. Under your plan, the service must be medically necessary and certain clinical criteria must be met before we can provide coverage. We are unable to provide preapproval because you do not meet the clinical criteria, as explained below.

A Blue Cross Medical Consultant, a board-certified M.D. in General Surgery, reviewed your appeal, the information you or your provider submitted, and the medical policy titled "Transgender Services". The Medical Consultant determined the following:

All submitted documentation has been reviewed. You are appealing the denial of prior authorization for multiple feminization (change appearance to look more female) surgical procedures to your hairline, forehead, lips, brows, nose, chin, and throat to reduce the appearance of your Adam's apple as treatment of your gender identity disorder (strong desire to assume the physical characteristics and gender role of the opposite sex). Your benefit plan does not cover gender affirmation/reassignment services that are considered by Blue Cross to be cosmetic or experimental and investigational.

According to the Blue Cross medical policy titled "Transgender Services," selected medical and surgical treatments of gender dysphoria (strong desire to live as a member of the opposite sex) have been established as medically necessary. The established treatments of gender dysphoria include:

- Puberty suppression in adolescents
- Hormone therapy (for masculinization/feminization)
- Medically necessary gender affirming surgery such as genitalia reconstruction and mastectomy (breast removal) in biological female-to-male transitions.

The policy also states that primarily cosmetic surgeries are excluded from coverage as not medically necessary. This includes, but is not limited to, masculinization and feminization surgeries, such as breast enhancements or implants; eyelid or brow lift; cheek/malar or cheekbone implants; chin/nose implants; chondrolaryngoplasty (Adam's apple reduction); collagen injections; forehead lift; hair transplantation, hair removal except by electrolysis in preparation for genital surgery; lip reduction; liposuction (fat cell removal); jaw bone reduction, mastopexy (breast lift or changing the shape of the breasts); neck tightening; pectoral (chest) implants; removal of redundant (extra or loose) skin; rhinoplasty (changing the shape or size of the nose); speech therapy, and all other non-covered services. The procedures requested are cosmetic and are therefore excluded from coverage under your group health care plan. As such, the denial of prior authorization for this service (procedure codes 15824, 21270, 15769, 14040, 31599, 21137, 21209, 30420, 40799, 15776, and 15773), is maintained.

In that regard, Section 3: What BCBSM Pays For (Page 56) of the *Certificate*, and Section 5: General Services We Do Not Pay For (Page 140) of the *Certificate*,

state that we do not pay for gender reassignment services that are considered by Blue Cross to be cosmetic.

Your appeal is denied.

Director's Review

Page 56 of the certificate states with respect to the treatment of gender dysphoria:

We pay for:

- Medically necessary services for the treatment of gender dysphoria.
 - This includes professional and facility services.

We do not pay for:

- Gender reassignment services that are considered by BCBSM to be:
 - Cosmetic, or
 - Treatment that is experimental or investigational

The Director assigned an independent review organization (IRO) to evaluate BCBSM's medical policy and help determine whether the facial feminization surgery is medically necessary for treating the Petitioner's condition. This review is required by section 11(7) of the Patient's Right to Independent Review Act, MCL 550.1911(7).

The IRO reviewer is a physician in active practice who is board-certified in plastic surgery. The IRO reviewer's report included the following analysis and recommendation:

The [REDACTED] physician consultant explained that the criteria for surgery include gender incongruence is marked and sustained; meets diagnostic criteria for gender incongruence prior to gender-affirming surgical intervention in regions where a diagnosis is necessary to access health care; demonstrates capacity to consent for the specific gender-affirming surgical intervention; understands the effect of gender-affirming surgical intervention on reproduction and they have explored reproductive options; other possible causes of apparent gender incongruence have been identified and excluded; mental health and physical conditions that could negatively impact the outcome of gender-affirming surgical intervention have been assessed, with risks and benefits have been discussed; and stable on their gender affirming hormonal treatment regime (which may include at least 6 months of hormone treatment or a longer period if required to achieve the desired surgical result, unless hormone therapy is either not desired or is medically contraindicated). The physician consultant indicated that the member's licensed mental health therapists have documented that the patient meets the DSM-5 criteria for diagnosis of gender dysphoria. The consultant noted that letters were provided supporting that the member meets the WPATH standards of care for gender affirming surgery and are of the opinion that surgery will help to alleviate her dysphoria. The physician consultant indicated that the

member meets the criteria of medical necessity established by the WPATH Standards of Care 8 for gender affirming facial feminization surgery to alleviate her dysphoria. The consultant noted that this is also supported by the peer reviewed literature cited below which demonstrates an improvement in quality of life with facial feminization surgery in patients with gender dysphoria. The physician consultant indicated facial feminization surgery has been noted by some and WPATH, as well as being for many patients, the most beneficial surgery is the face is seen by all whereas genitals are not seen when someone is wearing clothing. The consultant noted that thus facial appearance being gender congruent is of benefit to patients.

The [REDACTED] physician consultant explained that international consensus is these procedures are medically necessary and standard of care for the treatment of gender dysphoria in patients transitioning from male to female identity as is the case in this member. The consultant noted that the evidence-based consensus guidelines from the International Facial Gender Symposium paper stated, "The evidence demonstrates that core facial gender operations are not cosmetic, are medically necessary, and should be covered by insurance like other gender operations." The physician consultant indicated that the medical policy provided by the Health Plan deems the requested surgery to be cosmetic but does not provide a rationale for this determination. The consultant noted that the proposed surgery is considered safe, appropriate, and cost effective to resolve feelings of gender dysphoria as noted by WPATH SoC 8 and peer reviewed literature. The consultant also noted the member meets the WPATH criteria for gender affirming surgery listed below in the letters provided by her licensed mental health professionals. (World Professional Association for Transgender Health (WPATH)).

The [REDACTED] physician consultant indicated that the Health Plan's criteria are applicable to the member's condition in that she has gender dysphoria and is a transgender female. The physician consultant also indicated that the member meets Standard of Care criteria for facial feminization surgery.

Pursuant to the information set forth above and available documentation, the [REDACTED] physician consultant determined that facial feminization surgery is medically necessary for treatment of the member's condition.

The IRO reviewer recommended that the Director reverse BCBSM's denial of coverage.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the recommendation is afforded deference by the Director. In a decision to uphold or reverse an adverse determination, the Director must cite "the principal reason or reasons why the director did not follow the assigned independent review organization's recommendation." MCL 550.1911(18)(b). The IRO's review is based on extensive experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(17).

The Director, discerning no reason why the IRO's recommendation should be rejected, finds that the facial feminization surgery is medically necessary for the Petitioner, therefore, it is a covered benefit under the Petitioner's benefit plan.

IV. ORDER


The Director reverses BCBSM's July 12, 2022, final adverse determination. BCBSM shall immediately provide coverage for the Petitioner's facial feminization surgery. See MCL 550.1911(19). Further, BCBSM shall, within seven days of providing coverage, furnish the Director with proof it has implemented this order.

To enforce this order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, at this toll-free telephone number: (877) 999-6442.

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 Michigan 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 Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director

For the Director:

X 

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford