

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

In the matter of:

██████████,

Petitioner,

v

File No. 151938-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 2nd day of March 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for the specialty drug Gammagard by her health insurer, Blue Cross Blue Shield of Michigan (BCBSM).

On January 28, 2016, the Petitioner filed a request with the Director of Insurance and Financial Services for an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted, the Director accepted the request on February 4, 2016.

The Petitioner receives health care benefits, including prescription drugs, through an individual plan underwritten by BCBSM. The Director immediately notified BCBSM of the external review request and asked for the information it used to make its final adverse determination. BCBSM responded on February 9, 2016.

To address the medical issue in the case, the Director assigned it to an independent medical review organization, which provided its analysis and recommendation on February 17, 2016.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the *Blue Cross Premier Silver Benefits Certificate* (the certificate).

The Petitioner was diagnosed with infertility. To treat the infertility her endocrinologist recommended intravenous immune globulin (IVIG) replacement therapy using the specialty drug Gammagard and requested coverage from BCBSM.

BCBSM denied the request, saying Gammagard is experimental or investigational for the treatment of the Petitioner's condition. The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process, BCBSM affirmed its decision in a final adverse determination dated December 16, 2015. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny prescription drug coverage for the specialty drug Gammagard to treat the Petitioner's condition?

IV. ANALYSIS

Petitioner's Argument

Included with her external review request was a January 26, 2016, letter from the Petitioner addressed to BCBSM:

. . . [W]e have been trying to conceive for ten years. We visited many physicians in the area, went through many types of testing, and procedures, without any luck from any physician to find the root of the problem.

September of 2015 we were referred to [REDACTED] from Chicago, IL. [REDACTED] through her expertise and research has identified few medical issues that were causing infertility. Few months after seeing her, I was put on her protocol. Gammagard is one of the major drugs is going to be used, which is the only successful treatment. I have already been through many treatments, and now I'm just being denied. I ask you kindly to reconsider this denial, and give us the chance to have a healthy baby.

[REDACTED] wrote on November 12, 2015, to explain the decision to use Gammagard:

[The Petitioner] was referred to [our clinic] for the further immunological evaluation of her infertility of unknown immune etiology.

* * *

[The Petitioner] was tested for inherited blood clotting tendencies and acquired thrombophilia. [She] has been diagnosed heterozygous positive for the PAI-1 gene mutation. Patients like [the Petitioner] have an increased tendency for the blood to clot. The resulting clots may cause the following complications to occur: implantation failure, miscarriages, pre-eclampsia, intrauterine growth

retardation, oligohydramnios, abruption placenta, premature labor, unexplained intrauterine fetal death and thrombophlebitis.

For these reasons I am recommending IVIg therapy to suppress abnormal immune response. IVIg is given for one (1) day between day 6-10 of conception cycle and one (1) day every 1-2 weeks throughout pregnancy once established. The dosage is determined by the ideal body weight and it is administered intravenously. This patient will receive follow-up testing. Based on her test, continuation of IVIg treatment will be determined.

Without such treatment, this patient will continue to experience failed implantation, recurrent pregnancy losses, IUGR, JUF, or serious maternal complications.

BCBSM's Argument

In its final adverse determination, BCBSM's representative explained the basis for its denial of coverage for Gammagard:

Gammagard is a specialty pharmaceutical that requires prior authorization. For that reason, a Clinical Pharmacist, RPh reviewed the documentation and determined the following:

The Medical Policy for Immune Globulin Replacement Therapy does not allow this medication to be used for investigational indications. According to our record you are using this for infertility of immune etiology which is considered investigational

The BCBSM/BCN Joint Uniform Medical Policy Committee (JUMP) determined Gammagard is investigational / experimental for the treatment of infertility of immune etiology. The JUMP Committee is comprised of physicians and nurses who perform new technology assessment through the review of the world's medical literature. This review also includes consultation with practicing specialty physicians, specialty physician organizations and other providers, as appropriate. After consideration of the medical literature and the input of providers, a medical status is determined; this includes the designation of new technologies as investigational or established.

An investigational status means that the safety and effectiveness of a particular technology has not been definitively determined. An established technology means that the safety and effectiveness have been definitively determined. Investigational medical policies are reviewed regularly to guarantee that the investigational status continues to be supported by the evidence.

Director's Review

BCBSM denied coverage for Gammagard on the basis that it was experimental or investigational for use in treating infertility of immune etiology.

The certificate (pp. 152) has this exclusion:

Experimental Treatment

Services That Are Not Payable

We do not pay for:

- Experimental treatment. This includes experimental drugs and devices
- Services related to experimental treatment

“Experimental treatment” is defined in the certificate (p. 173) as

[t]reatment that has not been scientifically proven to be as safe and effective for treatment of the patient's conditions as conventional treatment. Sometimes it is referred to as “investigational” or “experimental services.”

The question of whether the specialty drug Gammagard is experimental or investigational when used to treat the Petitioner's infertility 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 physician reviewer is certified by the American Board of Obstetrics and Gynecology with a subspecialty in reproductive endocrinology / infertility; is a fellow of the American College of Obstetricians and Gynecologists; and is in active practice. The IRO report included the following analysis and recommendation:

Reviewer's Decision and Principal Reasons for the Decision:

Question:

Is the specialty drug Gammagard considered experimental / investigational for treatment of the enrollee's condition?

Yes. It is the determination of this reviewer that the specialty drug Gammagard is experimental / investigational for the treatment of the enrollee's condition.

Clinical Rationale for the Decision:

The treatments for a patient with the diagnosis of infertility due to immunologic causes, and especially their efficacy, are currently highly controversial when assessed for the standard of care. IVIG is one of these proposed treatments. Although a few early non-randomized, uncontrolled studies may have shown

modest benefit in properly characterized patients with repeated implantation failure, a cause of infertility treatment failure, most others that have used randomized controlled methods have not. Thus, there is no clear efficacy as yet shown up to the current literature.

A Cochrane Database review on IVIG treatment for infertility has also reported no efficacy. There is no data published on its performance compared with established treatments. This is, most likely, partly due to the lack of any reliable data supporting a clinically effective association between the screening tests used for the etiology and the treatments directed at the abnormal tests, such as the natural killer cell testing performed in this enrollee.

There is no published consensus for IVIG as a treatment for infertility and implantation failure. The American Society for Reproductive Medicine (ASRM), in their Practice Committee Opinion, states: "Although an association between anti-phospholipid antibodies [APA] abnormalities and in vitro fertilization [IVF] failure has been suggested in some retrospective studies, no association is present in the prospective studies summarized here. However, these studies may not be representative of typical IVF candidates: 34% were APA positive and the live birth rate was 45%. Nevertheless, the assessment of APA is not indicated among couples undergoing IVF. Therapy is not justified on the basis of existing data." As such, there is no published support in the ASRM guidelines for this treatment and indication. Gammagard has not been approved by the Federal Food and Drug Administration (FDA) for the enrollee's condition. The expected benefits of the requested health care service are not more likely to be beneficial to the enrollee than any available standard health care service.

IVIG treatment (Gammagard) has been proposed as a treatment for the diagnosis of this enrollee's infertility due to immunologic causes. For the reasons noted above, Gammagard is considered experimental / investigational for the indication of infertility and is not medically necessary for this enrollee. [References omitted]

Recommendation:

It is the recommendation of this reviewer that the denial issued by Blue Cross Blue Shield of Michigan . . . for the specialty drug Gammagard be upheld.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the IRO's recommendation is afforded deference by the Director. The IRO's analysis is based on extensive experience, expertise, and professional judgment. 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(16)(b). In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO's analysis should be rejected in this case, finds that Gammagard is experimental or investigational to treat the Petitioner's condition and is therefore not a covered benefit.

V. ORDER

The Director upholds BCBSM's December 16, 2015, final adverse determination.

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 Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin
Director

For the Director:

A handwritten signature in black ink, appearing to read 'RS Gregg', is written over a horizontal line.

Randall S. Gregg
Special Deputy Director