

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. 147052-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 17th day of April 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On March 30, 2015, ██████████ authorized representative of his wife ██████████ (Petitioner), filed a request with the Director of Insurance and Financial Services for an external review 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 April 6, 2015.

The Petitioner receives health care under a group plan underwritten and administered by Blue Cross Blue Shield of Michigan (BCBSM). The plan is sponsored by the Michigan Education Special Services Association (MESSA). The plan's benefits are defined in the *MESSA Choices Group Health Care Benefit Certificate*.

The Director notified BCBSM of the external review request and asked for the information used to make its final adverse determination. The Director received BCBSM's response on April 13, 2015.

The issue in this external review can be decided by a contractual analysis. The Director 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

On September 2, 2014, the Petitioner had a pregnancy termination procedure performed at ██████████ Hospital. The amount charged was \$5,703.77. The Petitioner contacted MESSA

before the procedure to confirm coverage would be provided. A MESSA employee stated the procedure would be covered. Later, BCBSM declined to approve coverage for the procedure.

The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process BCBSM issued a final adverse determination dated March 13, 2015, affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny coverage for the Petitioner's pregnancy termination procedure?

IV. ANALYSIS

BCBSM's Argument

In its final adverse determination BCBSM wrote:

Michigan Compiled Laws 550.544 (Abortion Insurance Opt-Out Act) prohibits any payment for voluntary abortions unless the employer has purchased an optional rider to provide coverage for elective abortions. Your school district did not purchase the rider and therefore it is not a part of your coverage.

Petitioner's Argument

The Petitioner and her husband argue that they received confirmation from MESSA before the procedure that it would be covered by the benefit plan. It was not until four months later that coverage was denied.

In a letter dated March 27, 2015, the Petitioner's husband wrote:

Our appeal is in regards to a bill that we received in the amount of \$5,703.77 dated [REDACTED] 2014 for a claim for a procedure with a date of service of [REDACTED] 2014 at [REDACTED]...After many sleepless nights and an emotional few weeks we met with medical professionals at [REDACTED] and they provided us with the diagnosis code for this procedure. They informed us we should check with our health insurance carrier to see if this was covered by our policy. From the hospital parking lot my wife contacted the MESSA Member Service Center by phone and spoke to a representative by the name of [REDACTED] to inquire if the diagnosis code (655.13) provided to us by [REDACTED] was covered under our policy [REDACTED] confirmed that this code was covered by our policy, and with this information we scheduled the procedure to take place. We had no

question or thoughts that this would not be covered as we had spoken directly to a representative of our health carrier.

Director's Review

Neither BCBSM nor MESSA dispute the Petitioner's account of events concerning their efforts to confirm coverage. However, in conducting external review under the Patient's Right to Independent Review Act, the Director's authority under the Patient's Right to Independent Review Act is limited to determining whether a claim denial is consistent with the terms of the policy in question and any applicable state law. The Director does not have the authority to amend the terms of a policy to conform to erroneous statements made by an insurer's employees or representatives.

Under the terms of the *MESSA Choices* policy, the Petitioner's pregnancy termination was an elective abortion which the policy defines as:

The intentional use of an instrument, drug or other substance or device to terminate a woman's pregnancy for a purpose other to increase the probability of live birth, to preserve the life or health of the child after live birth, or to remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman.

The *MESSA Choices* policy, in **Section 7: Exclusions and Limitations** (page 7.1), excludes coverage for elective abortions:

Elective Abortion: Services, devices, drugs or other substance as provided by any provider in any location that are intended to terminate a woman's pregnancy for a purpose other than to: Increase the probability of a live birth; preserve the life or health of the child after a live birth; or remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman. Any service, device, drug or other substance related to an elective abortion is also excluded.

NOTE: Elective abortions do not include: a prescription drug or device intended as a contraceptive; services, devices, drugs or other substances provided by a physician to terminate a woman's pregnancy because her physical condition, in the physician's reasonable medical judgment, requires that her pregnancy be terminated to avert her death; and treatment of the woman's experiencing a miscarriage or who has been diagnosed with an ectopic pregnancy.

This provision is required by a Michigan statute, the Abortion Insurance Opt-Out Act, Act 182 of 1983, MCL 550.541, *et seq.* Section 3 of that statute provides in pertinent part:

An expense-incurred hospital, medical or surgical policy or certificate...shall provide coverage for elective abortion only by an optional rider for which an additional premium has been paid by the purchaser.

The Petitioner's coverage does not include such a rider. Therefore, elective abortions are not a covered benefit. The Director finds that BCBSM's denial of coverage for the Petitioner's abortion and related services is consistent with the terms and conditions of the *MESSA Choices* policy and Michigan law.

V. ORDER

The Director upholds Blue Cross Blue Shield of Michigan's March 13, 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 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 General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Annette E. Flood
Director

For the Director:



Randall S. Gregg
Special Deputy Director