

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. 150133-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 16th day of November 2015
by Joseph A. Garcia
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) requested coverage for spine surgery. It was denied by her health insurer, Blue Cross Blue Shield of Michigan (BCBSM).

On October 15, 2015, the Petitioner filed a request with the Director of Insurance and Financial Services for a review of BCBSM's denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On October 22, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits through a group plan that is 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 October 29, 2015.

The case involves medical issues so it was assigned to an independent review organization which submitted its recommendation on November 5, 2015.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in a booklet called *MESSA Choices / Choices II Group Insurance for School Employees*¹ (the benefit booklet).

The Petitioner experienced hip pain for several years. Her orthopedic surgeon recommended sacroiliac joint fusion using the "iFuse Implant System" to treat her condition. When the Petitioner asked BCBSM to authorize the procedure, BCBSM denied the request, saying that sacroiliac joint fusion is investigational or experimental in the treatment of her condition and therefore not a benefit.

The Petitioner appealed BCBSM's denial through its internal grievance process. BCBSM held a managerial level conference on August 4, 2015, and issued its final adverse determination August 10, 2015, maintaining its denial. The Petitioner now seeks review of that final adverse determination from the Director.

III. ISSUE

Was BCBSM correct when it denied coverage for the Petitioner's sacroiliac joint fusion procedure?

IV. ANALYSIS

Petitioner's Argument

The Petitioner explained her grievance on the external review form, she wrote:

I have had hip pain for at least seven years now. At first the [Doctor] thought it was in my back, but they saw nothing. After further evaluation they realized it is my SI [*sacroiliac*] joint deteriorating. This is/might be due to child bearing. The pain is like an electric current shooting down my leg and when this happens I have no strength or control in my left leg. The pain is unbearable and can happen within three seconds if I turn, twist or hyper extend the left joint. [My surgeon] completed the clinical study on SI hip joint fusion that has been very successful. My quality of life has been dropping since I am unable to exercise daily. I used to run, walk, attend the [REDACTED] and play volleyball. Now, I am unable to do any of these in fear of the pain that it might cause my left leg. I have tried PT twice, a cortisone shot, and chiropractic care twice. Each of these with a different person in hopes one will be able to lesson this pain with no success. I am not understanding why I have to endure this pain when studies show SI joint fusion will cure this pain. I understand the "experimental" side, but I feel I must try something! Either I try and it most likely being successful or not walk at all later in my life because I did nothing to help it.

In a May 12, 2015, letter, Petitioner's physician wrote:

I am writing on behalf of my patient . . . to request prior authorization approval for minimally invasive surgical (MIS) sacroiliac (SI) joint fusion (iFuse Implant System®). The iFuse Implant System is FDA cleared and indicated for "sacroiliac joint dysfunction that is a direct result of SI joint disruptions and degenerative sacroilitis."

While I understand that MIS SI joint fusion is not covered under your medical policy, I am requesting individual consideration based on a review of the enclosed medical records documenting a long-standing chronic, disabling SI joint condition, unresponsive to appropriate non-surgical care. As you will see documented in the patient notes, my patient has been living with this painful SI joint condition for many years and the ability to conduct routine daily physical activity is now severely limited.

Additionally, from a clinical perspective . . . a recently published prospective, multicenter, randomized controlled trial (RCT), demonstrated that MIS SI joint fusion using the iFuse Implant System to be “superior to non-surgical management in relieving pain, improving function and improving quality of life in patients with SJ joint dysfunction due to degenerative sacroiliitis or SI joint disruption's.” . . .

BCBSM's Argument

In its final adverse determination, BCBSM told the Petitioner:

A board-certified M.D. in General Surgery and Grievance and Appeals Coordinator reviewed your appeal and your health care plan benefits for [BCBSM]. After review, the denial of prior authorization is maintained. The BCBSM/BCN Joint Uniform Medical Policy Committee . . . has determined that procedure code 27279 (Arthrodesis, sacroiliac joint, percutaneous or minimally invasive, with guidance) is considered investigation / experimental.

* * *

A board-certified M.D. in General Surgery reviewed the submitted documentation and determined:

Your doctor is requesting preauthorization for a minimally invasive sacroiliac joint fusion procedure with iFusion as treatment for sacroiliitis and sacroiliac dysfunction (low back pain). According to the Blue Cross Blue Shield of Michigan medical policy titled "Sacroiliac Joint Fusion for the Treatment of Low Back Pain", considers the procedure investigational. There is insufficient evidence in medical literature to determine the impact on health outcomes and long-term efficacy.

* * *

As procedure code 27279 is considered experimental / investigational, it is not a benefit of your plan. Therefore our denial of prior authorization must be maintained. If you choose to receive the services, you will be responsible for its cost.

Director's Review

The benefit booklet has this exclusion (p. 54):

The following exclusions and limitations apply to the MESSA Choices / Choices II program. These are in addition to limitations appearing elsewhere in this booklet.

* * *

- Experimental treatment (including experimental drugs or devices) or services related to experimental treatment except as approved by the BCBSM or MESSA medical director. In addition, we do not pay for administrative costs related to experimental treatment or for research management.

“Experimental or investigational treatment” is defined in the benefit booklet (p. 71):

Treatment that has not been scientifically proven to be as safe and effective for treatment of the patient's condition as conventional treatment. Sometimes it is referred to as "experimental services."

To determine whether the proposed sacroiliac joint fusion is investigational or experimental for the treatment of Petitioner's condition, the Director engaged an independent review organization (IRO) to evaluate the request as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO physician reviewer is board certified in orthopedic surgery, fellowship trained in spine surgery, and in active practice. The IRO report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that the requested sacroiliac joint fusion is experimental / investigational for treatment of the member's condition.

Rationale:

The MAXIMUS independent physician consultant, who is familiar with the medical management of patients with the member's condition, has examined the medical record and the arguments presented by the parties.

The results of the consultant's review indicate that this case involves a [REDACTED] year-old female who has a history of hip and back pain. At issue in this appeal is whether the requested sacroiliac joint fusion is experimental / investigational for treatment of the member's condition.

The medical records provided indicate that the member has chronic back pain and sacroiliac joint degeneration. There is no evidence of sacroiliac joint fracture, tumor or instability. The MAXIMUS physician consultant explained that sacroiliac joint fusion for degenerative sacroiliac joint disorders remains experimental at this time. The physician consultant also explained that more research is needed to determine the safety and efficacy of sacroiliac joint fusion for degenerative sacroiliac joint conditions.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that the requested sacroiliac joint fusion is experimental/ investigational for treatment of the member's condition. [Citations omitted]

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. 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).

The IRO's analysis is based on extensive experience, expertise, and professional judgment. The Director, discerning no reason why the IRO's recommendation should be rejected in the present case,

finds that sacroiliac joint fusion is investigational or experimental in the treatment of the Petitioner's condition and therefore not a benefit.

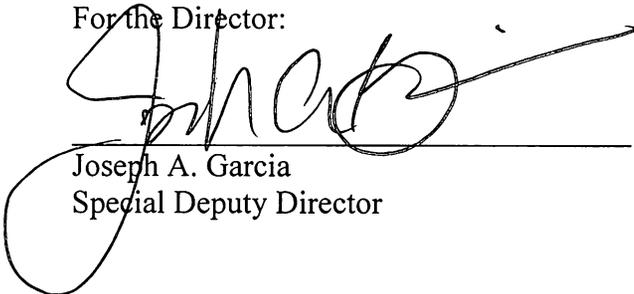
V. ORDER

The Director upholds Blue Cross Blue Shield of Michigan's final adverse determination of August 10, 2015.

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.

Patrick M. McPharlin
Director

For the Director:



Joseph A. Garcia
Special Deputy Director