

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. 150259-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 2nd day of November 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for certain procedures related to gender reassignment by her health plan, Blue Cross Blue Shield of Michigan (BCBSM).

On October 9, 2015, the Petitioner filed a request with the Director of Insurance and Financial Services seeking an external review of BCBSM's 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 October 16, 2015.

The Petitioner receives health care coverage through a group 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 provided its response on October 26, 2015.

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

The Petitioner's health care benefits are defined in BCBSM's *Simply Blue Group Benefits Certificate SG*¹ (the certificate).

¹ BCBSM form no. 911F, effective 08/2015.

The Petitioner's surgeon said the Petitioner "is a transgender female-to-male individual who desires . . . to achieve a male-appearing chest." The surgeon asked BCBSM to authorize coverage for a bilateral mastectomy and bilateral nipple reconstruction based on diagnosis code 302.85 (gender identity disorder in adolescence and adulthood). BCBSM denied the request.

The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process BCBSM affirmed the denial in a final adverse determination dated September 23, 2015. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny the Petitioner's request for surgery?

IV. ANALYSIS

Petitioner's Argument

In a letter of appeal included with the external review request, the Petitioner stated:

Upon calling Blue Cross Blue Shield on July 12, 2015, I gave the BCBS employee the following procedure and diagnosis codes to verify if my insurance benefits covered the given procedures. Those codes were:

CPT code (procedure code) -19303 x 2 (bilateral mastectomy)

CPT code (procedure code)-19350 x 2 (bilateral nipple reconstruction)

Diagnosis codes: 302.85

I wanted to verify if my benefits covered those procedures under my doctor's diagnosis code. The employee looked into my benefits and told me that my insurance benefits do cover those procedures under the given diagnosis code. I asked if she was positive on this and she said yes, but put me on hold and asked her supervisor to verify that I was covered. Both the BCBS employee that I spoke with and her supervisor said that the procedures are covered by my insurance because those two procedure codes do not have diagnosis restrictions. Therefore my diagnosis was not a concern when seeking coverage.

Two employees people looked at my benefits and confirmed that my benefits cover the procedures above with the given diagnosis code. These are BCBS employees whose job is to look at individual's insurance benefits and determine coverage. I did not ask these employees a board [*sic*] question about a procedure by its common name; I gave specific codes to make sure that there were no misunderstandings or misinterpretations. I expect BCBS to know their own benefits and be able to read an individual's benefits package. I expect those employees to then be able to answer questions on that benefit package when given specific in-

formation to verify. If BCBS's employee cannot do that, who else should I contact to be able to help me determine if my medical procedures are covered. Due to the fact that during that phone call I gave the specific procedure and diagnosis codes and then not one, but two BCBS employees determined that my insurance benefits cover those procedures, then those procedures should still be covered. I am requesting that BCBS honor what its employees told me the first time that I called to verify my benefits, that the procedures discussed are indeed covered.

Respondent's Argument

In the final adverse determination, BCBSM's representative told the Petitioner:

. . . After review, the denial is maintained. Gender reassignment surgery is an excluded benefit under your health plan. Therefore, prior authorization cannot be approved.

* * *

Please note that on July 24, 2015, correspondence was mailed to you indicating that those procedure codes [19303] and 19350 are excluded procedures under your current health care coverage as your covered benefits do not include gender reassignment surgery. Further on July 24, 2015, your provider's office called and this information was also verbally given.

While we understand you feel this prior authorization request is based on your medical need; however, BCBSM must administer benefits that align with the provisions of your health care plan.

Director's Review

The certificate (p. 100) has this exclusion under the surgery benefit:

We do not pay for:

- Gender reassignment surgery, reversal of prior gender reassignment surgery or any other surgical procedures related to Gender Identity Disorder, including, but not limited to surgical procedures involving the face, vocal cords, breasts, abdomen, or hips

The Petitioner was diagnosed with gender identity disorder. The requested surgery is related to that disorder and therefore is not a benefit under the certificate.

The Petitioner says that BCBSM provided incorrect information about surgical benefits in a telephone call on July 12, 2015. Even if that is true, there is no showing that the Petitioner acted in reliance on the incorrect information to his detriment, and BCBSM followed the telephone call with a July 24, 2015, letter that said the requested procedures would not be covered. Moreover, the certificate itself is very clear that gender reassignment surgery is not a benefit.

The Director finds that BCBSM's denial of coverage is consistent with the terms and conditions of the certificate.

V. ORDER

The Director upholds BCBSM's September 23, 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.

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