

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. 150654-001

Blue Cross Blue Shield of Michigan,

Respondent.

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

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage by her health insurer, Blue Cross Blue Shield of Michigan (BCBSM), for a procedure called “trigger point dry needling.”

On October 30, 2015, she 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.* On November 6, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits through the Michigan Education Special Services Association (MESSA), 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 furnished the information on November 13, 2015.

The case involves medical issues so it was assigned to an independent review organization which submitted its recommendation on November 18, 2015.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in a coverage booklet called *MESSA*

*Choices / Choices II Group Insurance for School Employees*¹ (the booklet).

The Petitioner experiences back and neck pain and has been receiving trigger point dry needling (TDN) since 2013. TDN is a method of treating muscle tension and spasm with needles.

BCBSM denied coverage for the TDN, saying dry needling procedures “are not generally accepted in medical practice and are considered experimental and / or investigational; therefore, not a covered benefit under your MESSSA Choices plan.”

The Petitioner appealed the denial through BCBSM’s internal grievance process. At the conclusion of that process BCBSM issued a final adverse determination dated September 24, 2015, affirming its denial. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Was dry needling experimental or investigational for the treatment of the Petitioner’s condition?

IV. ANALYSIS

Petitioner’s Argument

In the request for external review the Petitioner stated:

After having a procedure [dry needling] covered for nearly 18 months it was then denied because a new code (procedure) was used and now explained as experimental. I would like to be reimbursed up to the time I received information that new code was used and not to be reimbursed.

In a letter dated February 21, 2015, the Petitioner’s physical therapist explained:

[The Petitioner] has received multiple treatment interventions including traditional physical therapy exercises, modalities, and manual therapy. Unfortunately, none of these treatments have provided her lasting relief of her back and neck pain.

The most useful, longest lasting treatment that has allowed [her] to remain active and prevent surgery has been trigger point dry needling.

How does TDN work? A filament needle is pressed through the skin to penetrate into the tight muscle in attempt to elicit a twitch, which indicates a “release” and deactivation of the muscle tension and painful trigger point. No medication or liquid is injected, thus the term “dry” needling. The effects of this treatment go

¹ Version 04/15.

well beyond the lengthening of a chronically shortened muscle and include biomechanical and electrical activity changes in the muscle, though most people are not very aware of such changes.

BCBSM's Argument

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

. . . After review, I confirmed dry needling is considered investigational / experimental; therefore it is not a benefit of your plan. . .

* * *

A board-certified M.D. in General Surgery reviewed the [BCBSM] medical policy regarding dry needling and indicated:

Dry needling is still considered experimental / investigational. Per the [BCBSM] Medical Policy "Myofascial Trigger Point Injections / Dry Needling" dry needling for the treatment of painful trigger points is experimental / investigational. There is insufficient evidence in medical literature to determine the effectiveness of dry needle stimulation.

As dry needling is considered experimental / investigational for treatment of painful trigger points, it is not a benefit of your plan. Additionally, you were notified by your provider and signed a notice confirming that you were aware that dry needling was not covered by your insurance. As such, you remain liable for the charges.

Incidentally, you indicated this procedure was previously paid under your insurance coverage. However, your previous provider . . . billed for manual therapy techniques, therapeutic exercise and neuromuscular reeducation. If you in fact received dry needling your provider billed incorrectly.

Director's Review

The booklet (p. 54) contains this exclusion regarding experimental treatment:

The following exclusions and limitations apply to the MESSA Choices / Choices II program. . . .

- 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 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."

The question of whether the dry needling was experimental or investigational in the treatment of the Petitioner's condition 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 Physical Medicine and Rehabilitation (diplomate) with a subspecialty in pain management and is in active practice. The IRO report included the following analysis and recommendation:

Reviewer's Decision and Principal Reasons for the Decision:

It is the determination of this reviewer that the dry needling sessions provided by physical therapy were experimental / investigational for the treatment of the enrollee's condition.

Clinical Rationale for the Decision:

A multi-disciplinary approach is standard of care in managing myofascial pain. Proven efficacious treatment includes physical therapy (heat and ultrasound), oral medication, and exercise (stretching and strengthening), with or without trigger point injections.

To date, there is insufficient evidence for using direct dry needling into myofascial trigger points for pain control. . . .

* * *

The enrollee has myofascial pain of the neck and back. While the enrollee reports significant benefit from the dry needling sessions, the current literature does not support that this treatment would be superior to other therapies, such as physical therapy (heat and ultrasound), oral medications, and exercise (stretching and strengthening). Therefore, the dry needling sessions provided by physical therapy are considered experimental / investigational for this enrollee.

Recommendation:

It is the recommendation of this reviewer that the denial issued by Blue Cross and Blue Shield of Michigan for the dry needling sessions provided by physical therapy 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 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. In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO's recommendation should be rejected in this case, finds that dry needling is experimental or investigational for the treatment of the Petitioner's condition and is therefore not a benefit under the terms of the Petitioner's coverage.

V. ORDER

The Director upholds BCBSM's final adverse determination of September 24, 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:

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

Randall S. Gregg
Special Deputy Director