

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. 151727-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 17th day of February 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for a surgical procedure by her health insurance carrier, Blue Cross Blue Shield of Michigan (BCBSM)

On January 15, 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.* On January 25, 2016, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits 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 responded on January 28, 2016.

The medical issue in this case was evaluated by an independent medical review organization which provided its analysis and recommendation to the Director on February 8, 2016.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in BCBSM's *Simply Blue HSA Group Benefits*

Certificate with Prescription Drugs LG1 (the certificate).

The Petitioner has progressive lumbar pain. Her physician requested authorization for a minimally invasive procedure called eXtreme Lateral Interbody Fusion or XLIF (CPT code 22558). BCBSM denied the request because it considers the surgery to be experimental or investigational for treatment of her condition.

The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process BCBSM issued a final adverse determination dated January 6, 2016. The Petitioner now seeks review of that final adverse determination from the Director.

III. ISSUE

Is the XLIF surgery experimental or investigational for treatment of the Petitioner's condition?

IV. ANALYSIS

Petitioner's Argument

In the request for an external review, the Petitioner wrote:

[My doctor] has prescribed minimally invasive lumbar interbody fusion, XLIF, as the medically appropriate approach for my spinal fusion surgery to resolve my scoliosis condition. Prior authorization of the XLIF has been denied by BCBSM. BCBSM considers XLIF investigational and/or experimental. Almost all insurances and the entire medical community do not consider XLIF to be investigational and/or experimental. I am requesting reversal of the denial and approval of the XLIF for my surgery.

BCBSM's Argument

In its January 6, 2016 final adverse determination, BCBSM explained to the Petitioner its reason for denying coverage:

A board-certified M.D. in General Surgery reviewed your appeal and your health care plan benefits for [BCBSM] and determined the following:

All submitted documentation was reviewed. Your provider is seeking prior authorization for a lateral interbody fusion procedure as treatment for adult idiopathic scoliosis. According to the BCBSM Medical Policy, "Minimally Invasive Lumbar Interbody Fusion (XLIF)," this procedure is considered investigational and/or experimental; therefore this request cannot be approved.

Director's Review

The certificate has this exclusion (p. 140):

Services That Are Not Payable

We do not pay for:

- Experimental treatment. This includes experimental drugs or devices.

The certificate (p. 160) defines experimental treatment 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."

To answer the question of whether XLIF surgery is experimental or investigational in the treatment of the Petitioner's condition, the Director assigned the case to an independent review organization (IRO) for a recommendation 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 Neurological Surgery; is published in the peer reviewed literature; is in active practice; and familiar with the medical management of patients with the Petitioner's condition. 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 minimally invasive lumbar interbody fusion surgery (XLIF) procedure code 22558 was not experimental / investigational for the treatment of the enrollee's condition.

Clinical Rationale for the Decision:

The standard of care for a patient such as this enrollee would be to undergo a fusion. Most generally the type of fusion would be based upon the surgeon's preference and experience. Current peer reviewed literature supports the efficacy and benefits of such approaches.

* * *

The requested health care service or treatment has been approved by the Federal Food and Drug Administration for the enrollee's condition. The current medical or scientific evidence demonstrates that the expected benefits of the requested health care service are more likely to be equal to or beneficial to the enrollee than existing available standard health care services. As noted above, the current peer review literature supports the efficacy of XLIF as compared to standard fusion techniques. Based on the documentation

submitted for review and current medical literature, minimally invasive lumbar interbody fusion surgery, referred to as XLIF procedure code 22558 that was prescribed for the enrollee, is not considered investigational / experimental for treatment of the enrollee's condition.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). But the IRO report is accorded deference. 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 the requested XLIF surgery is not experimental or investigational for treatment of the Petitioner's condition, and is therefore a covered benefit.

V. ORDER

The Director reverses BCBSM's final adverse determination of January 6, 2016. BCBSM shall immediately authorize and cover the Petitioner's XLIF surgery and shall, within seven days of providing coverage, furnish the Director with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, at this toll free telephone number: (877) 999-6442.

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



Randall S. Gregg
Special Deputy Director