

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

In the matter of:

[REDACTED]

Petitioner

v

**Blue Care Network
Respondent**

File No. 148870-001

**Issued and entered
this 18th day of August 2015
by Randall S. Gregg
Special Deputy Director**

ORDER

I. BACKGROUND

On July 20, 2015, [REDACTED] (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.* The Director accepted the request on July 27, 2015.

The Petitioner receives individual health care coverage from Blue Care Network (BCN), a health maintenance organization. The Director notified BCN of the external review request and asked for the information it used to make its final adverse determination. BCN provided its response on July 28, 2015.

The medical issue in the case was assigned to an independent medical review organization which provided its analysis and recommendation to the Director on August 10, 2015.

II. FACTUAL BACKGROUND

On January 13 and January 20, 2015 while vacationing in [REDACTED], the Petitioner had two eye surgeries. BCN denied coverage.

The Petitioner appealed the denial through BCN's internal grievance process. At the conclusion of that process, BCN on May 26, 2015, issued a final adverse determination upholding the denial. The Petitioner now seeks the Director's review of the denial.

III. ISSUE

Did BCN properly deny coverage for the Petitioner's January 13 and January 20, 2015 surgeries?

IV. ANALYSIS

In its final adverse determination, BCN stated that it had denied coverage because "no authorization was obtained to show proof of medical necessity. In addition, your certificate requires prior approval for any non-emergent care performed outside of [REDACTED]"

In his request for external view, the Petitioner wrote:

I was out of the country for a month and a half in December 2014 to February 2015. While I was on vacation, I saw an eye doctor for a basic eye exam. To my surprise, the Doctor said that I was in dire need of an emergency surgery as my cornea was damaged. The shape of my cornea had now become oval. This in turn causes major issues if postponed; issues that I clearly would want to avoid so that I do not face more problems than I already had with my eyes.

As important as this surgery was, I couldn't help but think of the cost of the surgery and I knew that my insurance would cover this procedure, but I was out of the country and didn't know how far my coverage would go. I called to inquire about my coverage in this particular situation and was told that, "So long as it is an emergency surgery, it is covered even if I am out of the country." At that point, I was relieved and decided that its best to not only get the procedure done as soon as possible for the sake of my eye, but to also take advantage of the time that I had already taken off of work since I was already on vacation for that long time period.

Upon my return back home, it was to my surprise to find a letter from Blue Care stating that my procedure was not covered. This did not make any sense to me. The only reason why I went ahead with the procedure while overseas was due to the fact that I was told it would be covered.

The BCN certificate of coverage, on page 34, defines a medical emergency as

the sudden onset of a serious medical condition resulting from injury, sickness or mental illness that manifests itself by signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to your health or...serious impairment to bodily function, or serious dysfunction of any bodily organ or part.

The certificate, on page 59, provides:

Except for emergency care as specified in Section 8, health, medical and hospital services listed in this certificate are covered only when:

- Provided by a BCN Participating Provider: and
- Preauthorized by BCN for select services.

Any other services will not be paid for by BCN wither to the provider or to the Member.

The question of whether the Petitioner's condition required emergency treatment 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 a physician who is board certified in ophthalmology and has been in active practice for more than ten years. The reviewer is an assistant professor at a university based school of medicine and is published in peer review literature. The reviewer is familiar with the medical management of patients with the Petitioner's condition. The IRO reviewer's report included the following analysis and recommendation:

[T]he member has a diagnosis of keratoconus for both eyes based on pentacam corneal imaging in a letter dated 1/23/15. Pentacam corneal imaging demonstrated severe inferior right corneal steepening with irregular astigmatism and mild inferior steepening of the left cornea....[T]he member underwent bilateral corneal intrastomal ring segment implantation on 1/13/15 and bilateral corneal collagen crosslinking on 1/20/15....

[T]hese surgeries appear to be medically necessary based on the medical records, but were clearly elective and were not emergent surgeries....[T]he letter from the physician and corneal imaging provided for review demonstrate signs of keratoconus....[T]he treatment provided was reasonable and medically necessary based on the available documentation in order to stabilize the member's vision and possibly prevent further damage. However...keratoconus is a slow disease that progresses over months or years....[D]elaying the surgery for weeks or possibly months would not likely result in any changes in the disease course or outcome....[T]he course of treatment in this case would not be considered emergent by a prudent layperson.

Pursuant to the information set forth above and available documentation...the eye surgery procedures that the member underwent on 1/13/15 and 1/20/15 were performed for medical purposes, and not to achieve less dependence on glasses, and were medically necessary for treatment of his condition, but were not emergent in nature.

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 can discern no reason why the IRO's recommendation should be rejected in the present case. The Director finds that BCN's denial of coverage for the Petitioner's eye surgeries is consistent with the terms of the BCN certificate of coverage.

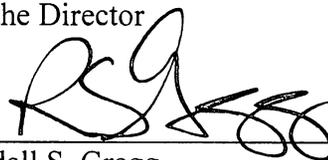
V. ORDER

The Director upholds BCN's May 26, 2015 final adverse determination. BCN is not required to provide coverage for the Petitioner's January 13 and January 20, 2015 eye surgeries.

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 sixty 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