

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. 152317-001

Blue Care Network of Michigan,

Respondent.

Issued and entered
this 28th day of March 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for a diagnostic test by her health plan, Blue Care Network of Michigan (BCN).

On February 22, 2016, ██████████, the Petitioner's authorized representative, 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.* The Director accepted the request on February 29, 2016.

The Petitioner receives group health care benefits through BCN, a health maintenance organization. The Director immediately notified BCN of the external review request and asked for the information it used to make its final adverse determination. BCN responded on March 2, 2016.

Believing the case involves medical issues, it was assigned to an independent review organization which submitted its recommendation to the Director on March 14, 2016.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the *Certificate of Coverage BCN Classic for Large Groups* (the certificate).¹

The Petitioner has ulcerative colitis and was treated with the prescription drug Remicade (infliximab). Her physician ordered the Anser IFX diagnostic test to monitor her response to Remicade.

¹ Dated January 1, 2014.

The test was performed on December 12, 2014, by Prometheus Laboratories, Inc., a non-participating provider. The charge was \$2,500.00.

BCN denied coverage, saying the test was investigational or experimental for the treatment of the Petitioner's condition and therefore not a covered benefit. The Petitioner appealed the denial through BCN's internal grievance process. At the conclusion of that process BCN issued a final adverse determination dated January 15, 2016, affirming its decision. The Petitioner now seeks a review of that final adverse determination by the Director.

III. ISSUE

Was the Anser IFX test experimental or investigational for the treatment of the Petitioner's condition?

IV. ANALYSIS

Petitioner's Argument

In a letter dated February 12, 2016, submitted with the external review request, the Petitioner's authorized representative said:

The patient was denied coverage for the Prometheus Anser IFX diagnostic test performed on 12/12/2014 due to the service being Experimental / Investigational service. . . .

We respectfully dispute all of the criteria that were used to deny Anser IFX testing for this patient. In our previous appeals we provided five peer-reviewed publications that address the importance of measuring levels of infliximab as well as antibodies to infliximab (ATI).

There is an ever increasing body of evidence that demonstrates the impact that increasing levels of ATI can have on a patient's response to infliximab. Those publications, as well as the additional, published and peer reviewed literature . . . clearly demonstrate that this technology cannot be considered unproven, experimental, nor not medically necessary.

These, as well as many other publications provide support that the use of the data provided by the assay can be utilized by a clinician as an "an effective management tool."

* * *

Based on the totality of all the documentation enclosed, and the additional information listed above, we are asking that the denial for the Anser IFX be overturned and the claim processed utilizing the patient's in-network benefits. . . .

BCN's Argument

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

Our step two grievance panel . . . reviewed the documentation you submitted, the member's BCN Classic for Large Groups Certificate of Coverage and the Blue Care Network / BCBSM Measurement of Serum Antibodies to Infliximab and Adalimumab Medical Policy. After thorough review of the case, the Panel maintained the previous denial. We

based our decision on the Blue Care Network / BCBSM Measurement of Serum Antibodies to Infliximab and Adalimumab Medical Policy, which indicates that that text is experimental and investigational and therefore not a covered benefit. Additionally, the service was performed by an out of network lab and pre-authorization was not obtained.

As stated in the [Petitioner's] BCN Classic for Large Groups Certificate of Coverage Exclusions sections: 9.1 Unauthorized and Out of Network Services—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 Participating Provider and Preauthorized by BCN for select services. 9.4 Non-Covered Services—Coverage does not include the following services: All facility, ancillary and physician services, including diagnostic tests, related to experimental or investigational procedures.

Director's Review

BCN raised two arguments in support of its decision to exclude coverage for the Anser IFX test. The first argument to be addressed is whether the test was a benefit under the terms of the certificate.

Diagnostic laboratory tests are covered and the benefit is described in the certificate (pp. 24, 32):

Section 8: Your Benefits

* * *

8.6 Outpatient Services

Facility and professional (physician) therapeutic and non-preventive diagnostic laboratory, pathology and radiology Services and other procedures when performed in an Outpatient Hospital setting, physician office, free standing center, or dialysis center for the diagnosis or treatment of a disease, injury or other medical condition are covered when Medically Necessary and Preauthorized by your treating physician and BCN. [Emphasis supplied]

The certificate, in "Section 9: Exclusions and Limitations" (p. 57), also has this provision:

9.1 Unauthorized and Out of Network Services

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 Participating Provider; and
- Preauthorized by BCN for select services.

Read together, these two provisions exclude coverage for diagnostic tests that are performed by an out-of-network provider without preauthorization from BCN. Prometheus Laboratories, Inc., does not participate with BCN and there is nothing in the record to show that BCN authorized the laboratory

test.² The Director concludes that the Petitioner's Anser IFX test was not a benefit under the terms of her coverage.

In deciding this case on the basis that the diagnostic test is not covered because it was performed by an out-of-network provider without required pre-authorization, the Director does not need to address BCN's other argument that the test itself is excluded from coverage because it is experimental or investigational. Consequently, the Director does not need to consider the recommendation of the independent review organization that the Anser IFX test is not experimental or investigational.

V. ORDER

The Director upholds BCN's final adverse determination of January 15, 2016.

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:



Randall S. Gregg
Special Deputy Director

² The test was apparently ordered by a BCN-contracted gastroenterologist but the gastroenterologist did not request pre-authorization for the test from BCN. Prometheus Laboratories acknowledged in a November 5, 2015, letter that it was not aware that pre-authorization was required for out-of-network services.