

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. 153356-001

Blue Care Network of Michigan,

Respondent.

Issued and entered
this 10th day of May 2016
by Joseph A. Garcia
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On April 22, 2016, ██████████ (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 Petitioner receives group health care benefits through Blue Care Network of Michigan (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 initially furnished information on April 27, 2016, and on April 29, 2016, after a preliminary review of the information submitted, the Director accepted the case for an external review.

The medical issue in this case was evaluated by an independent review organization which provided its analysis and recommendation to the Director on May 10, 2016.

II. FACTUAL BACKGROUND

The Petitioner's benefits are described in the *BCN 65 Certificate of Coverage* (the certificate) and its amending prescription drug rider.

The Petitioner's BCN coverage is secondary to Medicare and covers copayments and deductibles for Medicare-covered services and some additional benefits not covered by Medicare.

The Petitioner has rosacea, a chronic acne-like facial skin condition. Her physician prescribed the drug Mirvaso (topical gel 0.33%) to treat it. BCN denied coverage, saying Mirvaso is cosmetic in

nature and therefore not a 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 April 14, 2016, upholding its denial. The Petitioner now seeks review of that final adverse determination from the Director.

III. ISSUE

Is Mirvaso considered to be cosmetic for treatment of the Petitioner's rosacea?

IV. ANALYSIS

BCN's Argument

In its April 14, 2016 final adverse determination, BCN wrote:

The [*grievance*] Panel . . . reviewed the documentation submitted with your grievance and the information you shared at the meeting. The Panel determined that your prescription drug benefit excludes medication that are considered cosmetic drugs. Therefore, your request remains denied.

Petitioner's Argument

The Petitioner explained her position in a May 4, 2016, letter that was filed with the external review request:

. . . I have been dealing with skin condition since March 2014. After several treatments of Laser for the last two years which has helped my condition but has not by any means cured it, my dermatologist . . . prescribed the Mirvaso medication because he has had other patients that have benefitted tremendously using this medication. They gave me a couple of samples for Mirvaso to try for a month before they prescribed it to me, to see if it helped my condition and it did.

[BCN] keeps saying that they do not cover medication for cosmetic reasons. [My doctor] prescribed this medication for a skin disease Rosacea. Rosacea is a skin disease just like Eczema and Psoriasis yet they cover medication for these two diseases. There is no other medication out there that is similar to Mirvaso. The Mirvaso kept my condition under control so I would not need further Laser treatments. Because I no longer have any samples that were given to me my Rosacea [is] starting to inflame again. If further medical information is needed I can provide it.

I appreciate you taking the time to review my medical documentation which indicates Lupus, Neuropathy, Subacute Cutaneous Lupus and Sjogrens Disease and Rosacea which was all caused by extensive chemotherapy and radiation that I received in 2010 for Stage Four lung cancer. I did not have any of these conditions before Chemo and all I am asking

is for a medication to control my Rosacea which includes small broken blood vessels on my face, and will possibly make my life a little bearable.

Director's Review

Cosmetic drugs are excluded under section E of the prescription drug rider:

E. Exclusions

* * *

4. There is no coverage under the Rider for any cosmetic drug or drug used for cosmetic purpose. "Cosmetic drug" or "cosmetic purpose" means any prescription legend drug which is intended to be rubbed, poured, sprinkled or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for the purpose of cleaning, beautifying, promoting attractiveness, promoting hair growth, reducing or eliminating wrinkles or altering the appearance, and any substance intended to be used as a component of the above drugs.

To help the Director answer the question of whether Mirvaso is considered to be a cosmetic drug when used to treat the Petitioner's condition, the issue was presented 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 board certified in dermatology, has been in active practice for more than 15 years, and is familiar with the medical management of patients with the Petitioner's condition. The IRO report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that Mirvaso is considered cosmetic for treatment of the member's condition.

Rationale:

* * *

The results of the consultant's review indicate that this case involves a 61 year-old female who has a history of rosacea. At issue in this appeal is whether Mirvaso is considered cosmetic for treatment of the member's condition.

Mirvaso is a drug that is Food and Drug Administration (FDA) approved to treat persistent facial erythema associated with rosacea. The MAXIMUS physician consultant explained that this means that essentially, Mirvaso decreases the appearance of redness on the skin. The physician consultant also explained that Mirvaso has not been scientifically proven to decrease pain or cure the rosacea. The consultant indicated that the effect of this medication is temporary based on its ability to peripherally vasoconstrict vessels in the skin. The Health Plan denied coverage for the drug saying that the effect of the drug is to

reduce redness, which is a cosmetic concern. The consultant explained that since the only thing the medication does is to reduce the appearance of redness in the face temporarily, the medication would be considered to be used for cosmetic improvement.

Pursuant to the information set forth above and available information, the MAXIMUS physician consultant determined that Mirvaso is considered cosmetic for treatment of the member's condition. [References omitted.]

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 recommendation is granted 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 drug Mirvaso is cosmetic in nature for the treatment of the Petitioner's condition and is therefore excluded from coverage under the terms of the prescription drug rider.

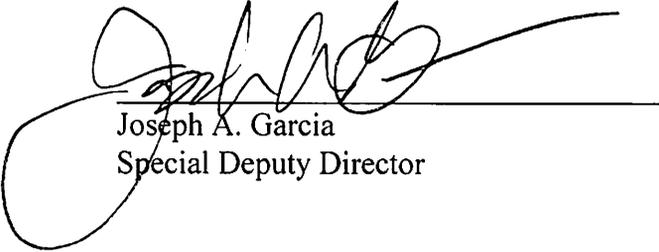
V. ORDER

The Director upholds BCN's final adverse determination dated April 14, 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


Joseph A. Garcia
Special Deputy Director