

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. 153666-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 16th day of June 2016
by **Randall S. Gregg**
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On May 12, 2016, ██████████, authorized representative of ██████████ (Petitioner), filed a request for external review with the Director of Insurance and Financial Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits through Blue Care Network of Michigan (BCN), a health maintenance organization. The Petitioner's benefits are defined in BCN's *Certificate of Coverage BCN Classic HMO for Small Groups*.

The Director notified BCN of the external review request and asked for the information used to make its adverse determination. The Director received BCN's response on May 17, 2016. On May 19, 2016, after a preliminary review of the material submitted, the Director accepted the request. BCN furnished additional information for the external review on May 25, 2016.

To address the medical issues in dispute, the case was assigned to an independent medical review organization which provided its analysis and recommendation to the Director on June 2, 2016.

II. FACTUAL BACKGROUND

The Petitioner, 44 years old, had to have his left small, ring and middle fingers amputated as a result of a blast injury. His occupational therapist recommended a myoelectric partial hand prosthesis and requested authorization and coverage from BCN. The cost was estimated to be between seventy-one and seventy-five thousand dollars. BCN denied coverage ruling that the prosthesis is experimental/investigational for treatment of the Petitioner's condition.

The Petitioner appealed the denial through BCN's internal grievance process. At the conclusion of that process, on March 18, 2016, BCN issued a final adverse determination affirming its coverage denial. The Petitioner now seeks the Director's review of that determination.

III. ISSUE

Did BCN properly deny coverage for the partial hand prosthesis?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination, BCN stated that a partial hand prosthesis is a benefit exclusion according to its medical policy, "Myoelectric Upper Limb Prostheses."

In its initial denial letter dated August 10, 2015, BCN wrote:

Per the BCN medical policy Myoelectronic Upper Limb Prostheses, states a prosthesis with individually powered digits, including but not limited to a partial hand prosthesis, does not meet BCN's medical criteria for coverage and is considered experimental/investigational. This policy states the effectiveness of this treatment has not been established to be equal to or better than traditional therapy. [BCN] does not pay for services, treatment or drugs that are experimental or investigational (has not been scientifically demonstrated to be safe and effective). The requested service is not eligible for coverage under the terms of this member's BCN Classic HMO for Small Groups certificate, section 9.4 Non Covered Services.

Petitioner's Argument

In a letter dated May 11, 2016 accompanying the request for external review, the Petitioner's prosthetist wrote:

[Petitioner] requires an upper limb prosthesis as a result of a blast injury, causing circumstances in which the patient is presenting for a new device for the first time.

An upper limb prosthesis serves a medical purpose in that it will provide limb function for [Petitioner]. The multi-articulating fingers of the proposed hand prosthesis will allow the fingers of [Petitioner's] i-digits to wrap around objects in a compliant grip. This is more life-like and provides a stronger grip with less force and power consumption....

The i-digits are not experimental or investigational as they are successfully utilized by many individuals including patients that utilize the digits successfully on both hands (bilaterally).

* * *

Although Medicare, WC and the VA all accept, and have accepted for years, the functional, life-changing validity of the i-digits and limbs which demonstrates that the i-digits are not experimental and investigational as suggested in the BCN policy. The patient meets the inclusion criteria of the BCN policy that was utilized to determine the patient's denial of the i-limb digits:

- "Standard body-powered prosthetic device cannot be used or are insufficient to meet functional needs of the individual in performing activities of daily living AND
- The remaining musculature of the arm contains the minimum microvolt threshold to allow operation of a myoelectric prosthetic device; AND
- The patient is free of comorbidities that could interfere with function of the prosthesis: AND
- Functional evaluation indicates that with training, use of a myoelectric prosthesis is likely to meet the functional needs of the individual (e.g. gripping, releasing, holding and coordination of movement of the prosthesis) when performing activities of daily living." (Title: Myoelectric Upper Limb Prostheses BCN policy effective date: 1/1/15).

Also the policy utilized to determine whether or not the digits were considered experimental investigational did not include any studies regarding the digits themselves but rather was based solely on the other myoelectric devices (not including the digits themselves)." (BCN medical policy)

It is considered that [Petitioner] will benefit considerably from the gripping patterns presented by the i-digits as he is an active person and will be able to utilize the enhanced functionality of the digits both at work and at home.

* * *

As the i-digits use traditional myoelectric impulses (muscle signal) to open and close the hand's lifelike fingers, it is considered that [Petitioner] will be able to quickly adapt to the i-limb digits and master the device's multi-articulating gripping functions with occupational therapy and training. The swift learning process will have the key benefit of enabling [Petitioner] to return to his vocational and avocational activities of daily living, given the significant disabilities he presents with following the traumatic injury to his left hand.

Director's Review

In the May 11 letter quoted above, the Petitioner's prosthetist's asserted that the Petitioner meets the inclusion criteria listed in BCN's medical policy for upper limb myoelectric prostheses. The prosthetist listed several of those factors but did not include the medical policy's

requirement that the patient's amputation be at or above the wrist level. The Petitioner does not meet that requirement.

In addition, the prosthetist did not acknowledge the medical policy's list of excluding factors and specifically the exclusion for prostheses "with individually powered digits, including but not limited to a partial hand prosthesis" which BCN considers to be experimental/investigational. The BCN certificate (page 27) provides coverage for covered services that are medically necessary but excludes coverage for experimental services (pages 62-63).

To determine whether the partial hand prosthesis is correctly classified by BCN as experimental, the Director presented this case to an independent medical 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 review was conducted by a physician who has been in active practice for more than 12 years and who is board certified in physical medicine and rehabilitation. The reviewer is familiar with the medical management of patients with the Petitioner's condition. The reviewer's report included the following analysis and recommendation:

The member sustained a significant injury to his nondominant left upper extremity as described above, and has residual use of his thumb and partial use of his index finger....[T]he member has not failed use of a body powered prosthesis, which could provide a functional grip or further rehabilitation of his left hand....[P]redominant prosthetic recommendation for a partial hand amputation remains passive devices due to their cosmetic quality, ease of fitting, and functional value....[T]ask specific devices can also be considered for vocational and avocational activities including fishing and crossbow use....[A]n electric nail clipper could also be considered to improve the member's independence in self-care.

[T]he requested i-limb digit limb prosthesis is considered experimental/investigational for the treatment of the member's condition....[T]he Health Plan's criteria for myoelectric upper limb prostheses is consistent with the current and generally accepted standards of care for the member's condition. The member's HealthCare Plan does cover myoelectric upper extremity prostheses under specific conditions when there is an amputation above the wrist. In this case, the member has a partial hand amputation....[T]he requested i-limb digit partial hand prosthesis is not the current standard of care for the member's condition.

Pursuant to the information set forth above and available documentation...the requested myoelectric upper limb (partial hand) (i-limb digits) prosthesis is experimental/investigational for treatment of the member's condition.

(Lusardi M. et al. Orthotics and Prosthetics in Rehabilitation. 3rd Edition. Saunders: September 2012. Murphy D. Fundamentals of Amputation Care and Prosthetics. Demos Medical Publishing: August 2013. Bouwsema H, et al. Movement characteristics of upper extremity prostheses during basic goal-directed tasks. *Clinical Biomechanics*. 2010;25(6):523-529. Bouwsema H, et al. Determining skill level in myoelectric prosthesis use with multiple outcome measures. *J Rehabil Res Dev*. 2012;49(9):1331-48. Weir R. Externally Powered

Partial Hand Prosthesis, Northwestern University Prosthetics Research Laboratory and Rehabilitation Engineering Research Program. Veterans Administration Merit Proposal A3028 R, 2003.)

While the Director is not required in all instances 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 subscriber contract. See MCL 550.1911(15). The Director, discerning no reason why the IRO's recommendation should be rejected in the present case, finds that the myoelectric partial hand prosthesis is experimental for treatment of the Petitioner's medical condition and is, therefore, not a covered benefit.

V. ORDER

The Director upholds BCN's final adverse determination of March 18, 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 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