

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

In the matter of:

██████████  
Petitioner

v

Blue Care Network of Michigan  
Respondent

File No. 154995-001

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Issued and entered  
this 31<sup>st</sup> day of August 2016  
by Randall S. Gregg  
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On August 8, 2016, ██████████, on behalf of her minor son ██████████, 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 health care benefits as a dependent under a group plan issued by Blue Care Network of Michigan (BCN), a health maintenance organization. The benefits are defined in the *BCN Classic for Large Groups Certificate of Coverage*. The Director notified BCN of the external review request and asked for the information used to make its final adverse determination. BCN responded on August 10, 2016. The Director accepted the request on August 15, 2016.

The issue in this external review can be decided by a contractual analysis. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner, who is seven years old, has been diagnosed with autism spectrum disorder. He receives psychoanalysis with Dr. ██████████, a psychologist. Dr. ██████████ is not a member of BCN's provider network. The amount charged for the therapy provided between December 22, 2015 and April 28, 2016, was \$9,960.00. The

Petitioner's parents paid Dr. [REDACTED] and then sought reimbursement from BCN. BCN denied reimbursement. The Petitioner's mother appealed the denial through BCN's internal grievance process. At the conclusion of that process, on July 8, 2016, BCN issued a final adverse determination affirming its decision. The Petitioner now seeks the Director's review of that adverse determination.

### III. ISSUE

Is BCN required to provide coverage for the psychoanalysis provided to the Petitioner by Dr. [REDACTED]?

### IV. ANALYSIS

#### BCN's Argument

In its final adverse determination, BCN wrote:

As outlined in your certificate of coverage: Exclusions: 9.1 Unauthorized and Out of Network Services-Except for emergency care as specified in Section 8 of this Certificate, 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 either to the provider or to the Member. Section 9.10 Mental Health/Substance Abuse states that coverage does not include the following services: Care provided by Non-Participating facilities except for emergency admissions to the point of stabilization and Psychoanalysis and open-ended psychotherapy.

#### Petitioner's Argument

In the external review request, the Petitioner's parents wrote:

[T]he basis for denial of coverage does not take into account the legal requirement for coverage of services under Michigan's Autism Insurance Reform legislation (PA 99 and PA 100 of 2012) and coverage under Section 8.15 of the Certificate of Coverage ...

\* \* \*

We have been told that this treatment was denied because psychoanalysis is not covered under my Blue Care Network plan and that his clinician, Dr. [REDACTED], is not a covered provider. We attempted to obtain preauthorization for this service, as required under the plan, but were denied. We have also been told

that there are no providers in network that can provide this medically necessary service to my son.

While I understand that psychoanalysis is not generally covered by my plan, the plan does cover services for the treatment of ASD and does **not** exclude psychoanalysis under this provision. In fact, Section 8.15 of the Certificate of Coverage is quite broad and covers, "Comprehensive treatment focused on managing and improving the symptoms directly related to a Member's ASD" and "Therapeutic care as recommended in the Treatment Plan includ[ing] ... Outpatient Mental Health therapy ..."

Furthermore, PA 99 and PA 100 of 2012 requires treatment of ASD and, in this case, requires coverage for [Petitioner's] psychoanalysis. Section 416(e)(1) of PA 99 states that " ... a health care corporation or group or nongroup certificate **shall provide coverage** for the ... treatment of autism spectrum disorders."

[Petitioner's] treatment is "behavioral health treatment" for the treatment of autism spectrum disorder. His treatment has been determined to be medically necessary by Dr. [REDACTED] to develop, maintain and restore [Petitioner's] functioning, and in fact, is proving to be successful in this effort.

\* \* \*

This behavioral health treatment is being provided by Dr. [REDACTED] who is a licensed psychologist and a specialist in psychoanalysis. As such, Michigan's Autism Insurance Reform Legislation requires coverage of this service.

I understand that Dr. [REDACTED] is not a provider in the Blue Care Network and that the benefits under my plan generally are for in-network providers. However, when I inquired about in-network providers, I was informed that there are no in-network providers who are capable of providing this service. Where a service is a covered service under the Certificate of Coverage and is required by law, denial of out of network coverage is unjustified.

### Director's Review

Section 3406s of the Michigan Insurance Code, MCL 500.3406s, mandates coverage for the diagnosis and treatment of autism spectrum disorders. However, section 3406s(2) provides:

This section does not limit benefits that are otherwise available to an insured or enrollee under a policy, contract, or certificate. An insurer shall utilize evidence-based care and managed care cost-containment practices pursuant to the insurer's procedures if the

care and practices are consistent with this section. *An insurer may subject coverage under this section to other general exclusions and limitations of the policy, contract, or certificate, including, but not limited to, coordination of benefits, affiliated provider requirements, restrictions on services provided by family or household members, utilization review of health care services including review of medical necessity, case management, and other managed care provisions.*  
[Emphasis added.]

In section 8.15 of the *BCN Classic for Large Groups Certificate of Coverage* (page 41) BCN does impose an affiliated provider requirement for treatment of autism spectrum disorders:

Services for the diagnosis and treatment of [autism spectrum disorders] are covered when performed by a BCN approved Participating Provider. Covered diagnostic services must be provided by a Participating physician or a Participating psychologist...

BCN's requirement that autism services be provided by a participating provider is permitted under Public Act 100 of 2012, MCL 500.3406s.

#### V. ORDER

The Director upholds BCN's final adverse determination. BCN is not required to provide coverage for the psychoanalysis provided to the Petitioner by Dr. Michael Singer.

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:



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Randall S. Gregg  
Special Deputy Director