

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. 149128-001

Health Alliance Plan of Michigan
Respondent

Issued and entered
this 24th day of August 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On August 3, 2015, ██████████ on behalf of his minor son ██████████ (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 health care benefits under a group plan sponsored by the State of Michigan. The plan is underwritten by Health Alliance Plan of Michigan (HAP), a health maintenance organization. The benefits are defined in HAP's *HMO Subscriber Contract*.

The Director notified HAP of the external review request and asked for the information it used to make its final adverse determination. HAP furnished its response on August 6, 2015. After a preliminary review of the information submitted, the Director accepted the request for review on August 10, 2015.

This case presents an issue of contractual interpretation. 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 was born on ██████████ He was diagnosed with severe anemia caused by blood loss from his gastrointestinal tract. His doctors determined that he should not be breast-

fed or permitted to ingest any foods during his first year other than Neocate, an infant formula that contains no amino acids, milk, gluten, or soy protein. With this dietary change, the Petitioner's condition improved. The Petitioner's doctors requested that HAP provide coverage for the Neocate. HAP denied coverage, ruling that Neocate is excluded from coverage under its *HMO Subscriber Contract*.

The Petitioner appealed the denial through HAP's internal grievance process. At the conclusion of that process, HAP issued a final adverse determination dated June 4, 2015, affirming its benefit decision. The Petitioner now seeks review of that adverse determination from the Director.

III. ISSUES

Did HAP correctly deny coverage for the Petitioner's Neocate infant formula?

IV. ANALYSIS

In its final adverse determination, HAP wrote:

The physical need for your child to have Neocate is not disputed by HAP. However, we are upholding our denial because this benefit is excluded.

The following documents were used to make this decision:

- HAP's Benefit Administration Manual
- Health Maintenance Organization (HMO) Subscriber Contract, under section 5.1

The pertinent portion of section 5.1 provides:

SECTION 5 EXCLUSIONS AND LIMITATIONS

The following are not covered under this Contract:

5.1 Non-Covered Services

* * *

o. Drugs, Dietary Drugs, Food and Food Supplements

* * *

7) Dietary food or food supplements with or without a prescription.

In the request for an external review, the Petitioner's father wrote:

[Petitioner's mother] and I would like reimbursement for the Neocate formula [Petitioner] required for his medical condition from 11/2014 – 5/2015. [Petitioner] was hospitalized for 4 days and required 2 blood transfusions for his condition. His GI doctor and hematologist required him to be on Neocate for his

survival. He was not allowed to continue breast feeding nor was he allowed to be on any other formula. The Neocate was the sole source of his nutrition. He could not have any other foods. He was in danger of failure to thrive and more blood loss if not on Neocate. HAP refuses to cover the formula saying it is not covered under the contract and we disagree with its reasoning and application of its own subscriber contract.

In a letter dated May 14, 2015, appealing HAP's decision to deny coverage, the Petitioner's father wrote:

The decision to deny coverage of the formula was based on the HMO Subscriber contract, under section 5.1(o)(7).

* * *

I do not believe this applies in this case. When looking at 5.1 as a whole and then more specifically at 5.1(o)(7), I believe it is meant to deal with situations where people want their weight loss foods paid for (i.e. Healthy Trim, Jenny Craig, etc...).

Neocate is not a food supplement. It is his only source of food. He is not taking this dietary food to live a healthier lifestyle. If he does not have the Neocate he will continue to have severe gastrointestinal bleeding and become failure to thrive. 5.1 (o)(7) in my opinion is not meant to address infants and formula, but it just happens to work in this situation so he can be denied coverage.

I can just as easily argue that this situation falls under Section 4 Benefits and Services (specifically 4.22 Drugs, Dietary Drugs, Food and Food Supplements).

4.22(a) HAP covers all medications that are administered in an Inpatient facility (which includes an inpatient hospital). [Petitioner] was in the hospital for 4 days where he received the Neocate for his condition.

4.22(b) Outside of the inpatient setting, HAP covers medications that cannot be self-administered. [Petitioner] is an infant and cannot administer the formula himself. He cannot make his own bottle. He cannot feed himself.

* * *

[Petitioner] is an infant that needs this formula to survive. It is medically necessary. Section 5.1 (o)(7) was not created for this type of situation. It just happens to fit nicely with the problem. If [Petitioner] does not have this formula he will be failure to thrive and will most likely need to continue seeing his current specialists to address his health.

The Petitioner's pediatric gastroenterologist and pediatric hematologist both wrote detailed letters of medical necessity urging HAP to provide coverage for the Neocate formula.

There is no question that Neocate was medically necessary for the Petitioner since it was his only available source of nutrition he could safely ingest for the first year of his life. However, insurers are not required to provide coverage for all medically necessary treatments. In this case, HAP's *Subscriber Contract* excludes coverage for dietary food.

The Petitioner's father argues that the exclusion of coverage for "dietary foods" is intended only to exclude coverage for weight loss products. However, there is no such limitation in the *Subscriber Contract* itself. The term "dietary" refers not only to weight loss foods but to any form of nutrition.

The Director finds that HAP correctly denied coverage for the Petitioner's Neocate infant formula under the terms of the *Subscriber Contract*.

V. ORDER

The Director upholds HAP's final adverse determination of June 4 2015.

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 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