

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

v

File No. 121737-001

Blue Care Network
Respondent

Issued and entered
this 8th day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On June 6, 2011, XXXXX (Petitioner) filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner immediately notified Blue Care Network of Michigan (BCN) of the request for external review and requested the information it used to make its final adverse determination. The commissioner received BCN's response on June 9, 2011.¹ After a preliminary review of the material submitted, the Commissioner accepted the request on June 13, 2011.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's health care benefits. That contract is the *BCN 10 Certificate of Coverage* (the certificate), which defines the Petitioner's health care benefits. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

¹ BCN provided additional information on June 15, 2011.

II. FACTUAL BACKGROUND

The Petitioner's coverage with BCN was effective on January 1, 2011. Early in January 2011, he went to the pharmacy to refill a prescription for injectable morphine sulfate and was told it would not be covered by BCN. The drug had been covered by his previous health plan, Priority Health.

BCN subsequently agreed to cover the drug from January 7 through February 7, 2011, to facilitate his transition from Priority Health to BCN. However, BCN declined to cover additional refills, stating that an injectable narcotic like morphine sulfate must be administered in a provider office or outpatient setting.

The Petitioner appealed the denial through BCN's internal grievance process and received its final adverse determination letter dated April 21, 2011.

III. ISSUE

Did BCN properly deny coverage for the injectable morphine sulfate?

IV. ANALYSIS

Petitioner's Argument

The Petitioner has had four operations on his back "with lots of hardware installed." He indicates he has been using prescription drugs for approximately 16 years to relieve the pain related to his degenerative disc disease; he has been taking the morphine sulfate since 1997. The Petitioner maintains that he was assured that all of his medications would be "grandfathered" in when his coverage changed to BCN.

According to the Petitioner, he has tried other medications but they have either not worked or he had unacceptable side effects. He states the injectable morphine sulfate is the only medication that provides relief. He believes that it is not practicable for him to have the morphine sulfate administered by a physician because he takes it every one to two hours around the clock.

The Petitioner believes BCN is required to cover his morphine sulfate because it is medically necessary.

Respondent's Argument

In its final adverse determination BCN explained its denial of coverage for the self-injectable morphine sulfate:

The [grievance] Panel maintained the denial because BCN requires the injectable Morphine Sulfate be administered by a medical professional. This service is covered under the medical benefit of your plan not the prescription benefit. Please speak with your Primary Care Physician . . . about arrangements for care.

BCN also indicated that it declined to cover the prescription in January 2011 because it was written by the Petitioner's previous primary care physician who does not participate with BCN.

Commissioner's Review

BCN covers certain prescription drugs under the certificate of coverage even if a group plan has not purchased a prescription drug rider. BCN's medical policy entitled "Prescription Drugs," contains the following:

The medications covered under the basic certificate include:

* * *

- Other drugs that are not designed to be self-administered, including injections or infusions administered in a physician's office (e.g., IV antibiotics, certain intramuscular injections that require close monitoring, etc.)

While other prescription drugs may be self administered, it is BCN's policy that injectable drugs (like morphine sulfate) be administered by a medical professional. BCN's notes from the grievance indicated:

Dr. XXXXX of BCN Pharmacy Services stated that oral therapy is appropriate for the member's care but with the large dose of morphine, hospitalization may be needed to detox the member. He states that non-narcotics are the preferred treatment for degenerative disc disease and was working with the member's new Primary Care Physician (PCP) . . . to transition the member's care. . . . Since the Morphine Sulfate the member seeks is injectable, it would be covered under medical benefit and must be administered in a provider's office or outpatient setting.

* * *

. . . The [grievance] Panel determined that BCN requires the injectable Morphine Sulfate be administered by a medical professional. . . . Also, it is not an accepted practice for members to self administer narcotics.

The Commissioner finds that BCN reasonably relied on its medical policy as a basis for denying coverage for injectable morphine sulfate for self administration.

V. ORDER

The Commissioner upholds Blue Care Network's final adverse determination of April 21, 2011. BCN is not required to provide coverage for injectable morphine sulfate to be self-administered.

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 Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner