

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. 152827-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 22nd day of April 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On March 23, 2016, ██████████ on behalf of his ██████████ (Petitioner), filed a request with the Department of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On March 30, 2016, after a preliminary review of the information submitted, the Director determined the case was eligible for an external review.

The Petitioner receives health care benefits through a group plan underwritten by Blue Care Network of Michigan (BCN). The benefits are described in BCN's *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 furnished the information on March 31, 2016.

The medical issues in this case were evaluated by an independent review organization which provided its analysis and recommendation to the Director on April 13, 2016.

II. FACTUAL BACKGROUND

The Petitioner, who is four years old, has a long history of feeding issues. Her doctor requested that BCN provide coverage for the Petitioner to participate in the Intensive Feeding Program at DeVos Children's Hospital in Grand Rapids. BCN denied coverage, ruling that it was investigational/experimental in the treatment of the Petitioner's condition. The Petitioner appealed the denial through BCN's internal grievance process. BCN issued a final adverse determination on February 25, 2016. The Petitioner now seeks review of that determination from the Director.

III. ISSUE

Is the intensive pediatric feeding program that was requested by her doctor experimental or investigational for treatment of the Petitioner?

IV. ANALYSIS

BCN's Argument

In its February 25, 2016 final adverse determination, BCN wrote that its appeals panel:

has maintained the denial per the BCBSM/BCN medical policy Pediatric Feeding Programs, the service requested is 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 for Large Groups benefit document, the definition section and section 9.3 titled Services That Are Not Medically Necessary.

Petitioner's Argument

In his request for review, the Petitioner's father wrote about the denial of coverage:

We appealed that decision claiming that BCN's policy fails to reflect the current scientific status of intensive feeding programs, which clearly establishes that they are not experimental. At the grievance hearing panel, three medical specialists from the IFP presented overwhelming and uncontradicted scientific evidence establishing that the IFP is safe effective, clinically appropriate, and rendered in accordance with generally accepted standards of medicine. We also explained that all other forms of traditional therapy proposed by BCN and its providers have been exhausted, and that each of these "medically necessary" treatments have essentially been ineffective. Despite the evidence establishing necessity...BCN has maintained their denial.

In a letter dated October 30, 2015, the medical director and the program director of the Intensive Feeding Program at DeVos Children's Hospital wrote:

[Petitioner] demonstrated feeding difficulties from the very start. Both bottle feedings and breastfeedings resulted in frequent spit-up and, at times, projectile vomiting. When solid food was introduced at approximately eight months of age, [Petitioner] exhibited significant food sensitivity. Outside of baby food banana, she often refused food offered and experienced significant gagging during mealtime attempts. Emesis also occurred frequently. Two courses of feeding therapy proved ineffective in broadening [Petitioner's] diet. When she was 20 months old, she was seen by a gastroenterologist and found to be extremely constipated. An EGD was also completed, at which time she was diagnosed with eosinophilic esophagitis and immediately placed on an elimination diet. A follow-up EGO in January 2014, when [Petitioner] was ██████████ old, showed the absence of esophageal [eisonophils] and she was cleared for a much less restricted diet (essentially anything non-dairy).

Despite the liberalization of her diet, [Petitioner] continued to accept a limited variety of foods. She was again referred for feeding therapy. As with her previous two courses of therapy, [Petitioner] made little progress in this outpatient treatment setting. When even minimal gains were achieved during therapy, generalization to the home setting was poor due to [Petitioner's] resistance and distress. A fourth attempt at feeding therapy occurred from January through August of this year, though was again unsuccessful in increasing the variety or volume of [Petitioner's] intake....A G-tube was placed in October of this year due to ongoing concerns about [Petitioner's] growth and lack of progression despite several courses of outpatient feeding therapy. As [Petitioner's] gastroenterologist...further describes in her letter of support...[Petitioner] will likely require a greater intensity of services to successfully transition back to an exclusively oral diet.

Since G-tube placement, parents report [Petitioner's] oral intake has worsened. She currently accepts a limited variety of foods (e.g., chips, pepperoni) and routinely refuses all fruits or vegetables. Liquid Intake is primarily limited to water. Introduction of and expectation to consume non-preferred foods or liquids results in significant child distress and associated refusal. Currently, [Petitioner] receives the majority of her nutrition through the G-tube (roughly 60%). A 3-day food diary provided by parents as part of [Petitioner's] evaluation demonstrated that her oral diet, providing the additional 40% of her nutrition, is deficient in a variety of important nutrients including Vitamin D, Calcium, Iron, Phosphorus, Magnesium, and Vitamin K. While [Petitioner] is currently obtaining the needed nutrition to support adequate growth and development via her G-tube feedings, it is unlikely she will transition to a calorically-dense diet rich in the nutrients her body requires to develop and grow optimally without enteral feeding support.

Complicating [Petitioner's] feeding development is a longstanding history of sensory sensitivities (i.e., taste, texture). Because we were unable to complete an oral motor assessment during our evaluation due to significant oral aversion, it remains unclear whether oral motor deficits may also be contributing to [Petitioner's] feeding difficulties. From a psychological perspective, it is clear that [Petitioner] has become conditioned by her medical history to be leery of food/drink and their associated stimuli. Described by her parents as an anxious little girl more generally, successful feeding treatment will require an approach that is sensitive of and evidence based in optimally managing [Petitioner's] anxiety during mealtimes.

In short, we believe that [Petitioner] would be an ideal candidate for admission to our program. The IFP was specifically designed to treat children, like [Petitioner], who require intensive transdisciplinary care to overcome their feeding challenges and to decrease their reliance on enteral feedings. The IFP offers interdisciplinary care in an intensive day treatment setting that draws on expertise across disciplines....

To meet criteria for program admission children typically have to have attempted outpatient feeding therapy. Many of our patients, much like [Petitioner], have failed repeated courses of outpatient care thereby demonstrating the need for a more intensive level of treatment. During day treatment care, children are provided a minimum of three daily therapeutic feeding sessions with program staff. To ensure successful generalization of treatment gains into the child's home setting, parents participate weekly in individual meetings with the psychologist and in family conferences with the child's treatment team. Parents are also educated on how to prepare the food/drink that best meets their child's clinical needs....

Director's Review

The Petitioner's health benefit plan (on page 59 of the *Classic for Large Groups* certificate of coverage) only covers services that are medically necessary, therefore, it excludes coverage for experimental and investigational medical services. The certificate of coverage (page 56) defines experimental or investigational services as:

a service that has not been scientifically demonstrated to be as safe and effective for treatment of the Member's condition as conventional or standard treatment in the United States.

BCBSM denied coverage for the program based on its medical policy titled "Pediatric Feeding Programs" which states in part:

The benefits of pediatric feeding programs, developed as multidisciplinary, integrated programs, have not been established. Although these programs may be safe, their long-term effectiveness has not been proven; therefore, pediatric feeding programs are experimental/investigational.

To evaluate the question of whether the Intensive Feeding Program is investigational/experimental for the Petitioner, the Director presented the issue to an independent 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 IRO reviewer is a physician who is board certified in pediatric gastroenterology and has been in active practice for more than eight years. 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 has failed outpatient feeding therapy twice....[I]npatient feeding therapy has a higher likelihood of success than repeating outpatient therapies that have continued to fail....[A]n inpatient feeding therapy program is a safe and effective way to help the member to introduce new foods with goal of not being dependent on G-tube feedings to maintain her weight in the future....[T]here is literature to support the requested feeding therapy program. (Silverman AH, et al. Nutritional and psychosocial outcomes of gastrostomy tube-dependent children completing an intensive inpatient behavioral treatment program. *J Pediatr Gastroenterol Nutr.* 2013 Nov;57(5). Noel RJ, et al. Body mass and oral feeding are maintained after transitioning tube to oral feeding through an inpatient behavioral program. *J Pediatr Gastroenterol Nutr.* 2006 Oct;43(4):E65. Brown J, et al. Successful gastrostomy tube weaning program using an intensive multidisciplinary team approach. *J Pediatr Gastroenterol Nutr.* 2014 Jun;58(6). Bithoney WG, et al. The effect of a multidisciplinary team approach on weight gain in nonorganic failure-to-thrive children. *J Dev Behav Pediatr.* 1991;12:254.)

Pursuant to the information set forth above and available documentation...the requested intensive pediatric feeding program is not experimental/investigational for treatment of the member's condition.

While the Director is not required in all instances to accept the IRO's recommendation, the recommendation is afforded deference by the Director. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). 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. 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 intensive feeding program is not experimental/investigational for the treatment of the Petitioner's condition. Therefore, the intensive feeding program is a covered benefit under the certificate.

V. ORDER

BCN's final adverse determination of February 25, 2016 is reversed. BCN shall immediately provide coverage for the Petitioner's intensive feeding program. See MCL 550.1911(17). BCN shall, within seven days of approving this care, provide to the Director proof it has implemented this order.

To enforce this order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Healthcare Appeals Section, toll free 877-999-6442.

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