

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. 153035-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 10th day of May 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On April 1, 2016, ██████████ legal guardian of her adult 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 through an individual plan from Blue Care Network Michigan (BCN), a health maintenance organization. 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 April 11, 2016. After a preliminary review of the information submitted, the Director accepted the request on April 14, 2016.

To address the medical issue, the Director assigned it to an independent review organization which provided its analysis and recommendation on April 27, 2016.

II. FACTUAL BACKGROUND

The Petitioner is eighteen years old and has been diagnosed with several conditions including bipolar disorder, autistic spectrum disorder, and attention deficit hyperactivity disorder. He has received a variety of treatments including medication, counseling, and inpatient care. His physicians have recommended that he receive residential treatment at the Midwest Center for Youth and Family in Kouts, Indiana. This facility is not a part of BCN's provider network.

BCN denied coverage for the requested treatment. The Petitioner's mother appealed the denial through BCN's internal grievance process. BCN issued a final adverse determination on February 5, 2016, affirming its decision. The Petitioner now seeks the Director's review of that adverse determination.

III. ISSUE

Did BCN correctly deny coverage for the residential mental health treatment the Petitioner's physicians recommended?

IV. ANALYSIS

Respondent's Argument

In the final adverse determination, BCN's grievance coordinator wrote to the Petitioner's mother:

Our Grievance Panel, which consisted of our Senior Medical Director of Clinical Affairs and our Senior Director of Customer Service, reviewed your request for authorization of inpatient mental health/residential treatment for your son....

In making its determination the grievance and appeal panel carefully considered input from multiple sources, including (and of course not limited to) a thorough psychiatric examination performed over a period of several days by Dr. [REDACTED], a one-time evaluation by Dr. [REDACTED], and information submitted during the panel hearing by the member's current therapist, Dr. [REDACTED], PhD.

The basis of the request for residential treatment, as stated during the panel meeting, is to contain [Petitioner] for a period of at least six months so that he cannot perpetrate further acts of non-conformity with social norms. The cause of these acts then needs to be considered. They seem either to be caused by Antisocial Personality Disorder (the criteria for which appear to have been met) or by a bipolar illness.

As regards the former, there is little or no evidence for the efficacy of residential treatment for antisocial personality disorder. As regards the latter (the influence of bipolar illness), residential treatment is not indicated for treatment of bipolar disorder which is an episodic illness. The member's treatment to date, as acknowledged by all present at the meeting today, has been pharmacologically sub-therapeutic to date. For this reason, it cannot be concluded that outpatient therapy has failed. We believe, for each of these reasons, that treatment adequate to address the member's bipolar illness is available in a less restrictive level of care.

Petitioner's Argument

In her request for external review, Petitioner's mother wrote:

Blue Care Network – by neglecting to use its own behavioral health criteria, specifically McKesson's InterQual Criteria, and by ignoring its own Behavioral Health Admission Criteria, as well as psychiatric practice and treatment guidelines – and through adverse determinations, seeks to treat the Petitioner's Bipolar Disorder episodically, only when acute symptoms emerge. Further, by offering no in-network/in-state residential mental health facility which provides 24 hour residential mental health treatment which includes containment for the safety of patients who require such treatment, BCN seeks to force the Petitioner who suffers from Bipolar Disorder, a recognized federal disability, to utilize outpatient treatment.

* * *

Two board-certified and licensed mental health providers, a psychologist and a psychiatrist (a BCN provider), twice sought prior authorization from BCN for residential mental health

treatment for our developmentally disabled and mentally ill son. The mental health providers furnished BCN with evidence in writing and verbally during the initial request for authorization and during the Member Grievance hearing that, for reasons of medical necessity, [Petitioner] requires residential treatment that includes 24 hour containment for safety, and that [Petitioner] cannot be treated with equal efficacy at a lower level of care.

* * *

The written and verbal requests for authorization made to BCN were NOT for a locked facility, based on a preset number of days, or for open-ended psychotherapy.

The question is whether it is medically necessary for the Petitioner to receive 24 hour residential mental health care, including Autism Services, both of which are covered benefits.

Director's Review

The BCN certificate of coverage describes its mental health care coverage in section 8.13. One of the benefits is residential mental health treatment which is described on page 43:

Residential Mental Health Treatment is treatment that takes place in a licensed mental health facility which has 24/7 supervision on a unit that is not locked. A nurse or psychiatrist is on site 24/7 to assist with medical issues, administration of medication and crisis intervention as needed. The treatment team is multidisciplinary and led by board certified psychiatrists. Residential treatment is:

- Focused on improving functioning and not primarily for the purpose of maintenance of the long-term gains made in an earlier program;
- A structured environment that will allow the individual to successfully reintegrate into the community. It cannot be considered a long-term substitute for lack of available supportive living environment(s) in the community or as long term means of protecting others in the Member's usual living environment; and
- Not based on a preset number of days such as a standardized program (i.e. "30-Day Treatment Program"), however, the benefit design will be the same as your medical inpatient benefit when Preauthorized by BCN.

BCN denied the request for coverage based on its conclusion that care at the residential level of care was not medically necessary.

To resolve the question of whether mental health treatment at the residential level of care is medically necessary, the case was assigned to an independent review organization (IRO) for analysis and a recommendation 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 has been in active practice for more than 15 years and is board certified in child and adolescent psychiatry. The reviewer is familiar with the medical management of patients with the member's condition. The IRO report included the following analysis:

[T]he history of the member as documented in the information submitted for review shows that he would be a good candidate for the residential level of care....[T]he member has multiple diagnoses that make his treatment difficult in his current setting, including diagnoses of autism spectrum disorder, attention deficit hyperactivity disorder and a non-verbal learning disorder. The member is also diagnosed with bipolar disorder, currently manic....[T]he member has many features of a manic episode, which include self-harming

behaviors, poor social judgment, mood shifts and impulsivity....[B]ased on the information provided for review, the member's severely out of control behaviors have included impersonating a federal agent, dangerous sexual liaisons, spending sprees, running away from home and engaging in non-suicidal, self-injurious behaviors that have resulted in legal problems with arrests and incarceration....[T]he member failed treatment at a lower level of care as he has had inpatient and significant levels of outpatient therapy with little success and has had some pharmacological management, but apparently has been non-compliant with this. This includes treatment with Abilify and lithium....[A]t times, the member can be motivated to improve and do well.

[T]he member appears to be a good candidate for residential treatment, as suggested by many of his previous treatment providers....[T]he member needs to be in a highly structured environment that will preclude him from eloping and preclude him from harming himself or others or breaking the law....[T]he member will need structure to comply with medication treatment and therapy....[T]he member will need consistent observation to note his response to treatment modalities....[G]iven the member's long pattern of maladaptive behaviors, it is reasonable to assume that his treatment should last for 6 months....[G]iven the member's pattern of strengths, it is also reasonable to assume that he should benefit from this treatment and hopefully end his cycle of antisocial behaviors.

Pursuant to the information set forth above and available documentation...it is medically necessary for the member to be treated at an inpatient residential treatment program level of care.

The Director is not required 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. Furthermore, it is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15). The Director, discerning no reason why the IRO's recommendation should be rejected, finds that care at the residential level of care is medically necessary to treat the Petitioner's mental health issues, and therefore is a covered benefit.

While finding that residential treatment is medically necessary for the Petitioner, the Director makes no finding that the Petitioner should receive treatment at the suggested Indiana facility. The BCN certificate of coverage requires that residential treatment must be provided at a participating facility in order to be covered. See section 9.10, page 64 of the certificate of coverage.

BCN must identify whether its provider network includes a suitable residential facility that can meet the Petitioner's treatment needs. In the event no such facility is available within the BCN network, BCN must provide coverage for the treatment at a non-network facility. See section 3530 of the Michigan Insurance Code. MCL 500.3530 which provides:

(1) A health maintenance organization shall maintain contracts with those numbers and those types of affiliated providers that are sufficient to assure that covered services are available to its enrollees without unreasonable delay. The [director] shall determine what is sufficient as provided in this section and as may be established by reference to reasonable criteria used by the health maintenance organization, including, but not limited to, provider-covered person ratios by specialty, primary care provider-covered person ratios, geographic accessibility, waiting times for appointments with participating providers, hours of operation, and the volume of technological and specialty services available to serve the needs of enrollees requiring technologically advanced or specialty care.

(2) If a health maintenance organization has an insufficient number or type of participating providers to provide a covered benefit, the health maintenance organization shall ensure that the enrollee obtains the covered benefit at no greater cost to the enrollee than if the benefit were obtained from participating providers, or shall make other arrangements acceptable to the [director].

V. ORDER

The Director reverses BCN's February 5, 2016, final adverse determination.

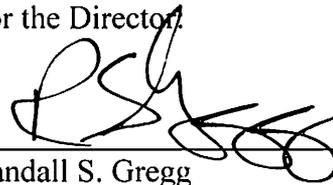
BCN shall immediately provide coverage for residential mental health treatment for the Petitioner and shall, within seven days of providing coverage, furnish the Director with proof it has implemented this order.

To enforce the order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, at this toll free number: (877) 999-6442.

This is a final decision of an administrative agency. 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 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