

STATE OF NORTH CAROLINA
COUNTY OF DARE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 INS 00275

SANDY T. MOORE,)
Petitioner,)
)
vs.)
)
BLUE CROSS/ BLUE SHIELD NC,)
STATE HEALTH PLAN,)
Respondent.)

FINAL DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on May 19, 2014 in Elizabeth City, North Carolina. After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals. Mailing time was allowed for submissions including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. The Respondent timely submitted proposals and argument on June 13, 2014 which was received by the Undersigned on June 17, 2014. The record was held open for submission by Petitioner, and receiving no further proposal or other materials, the record was closed on June 27, 2014.

APPEARANCES

For Petitioner: Sandy T. Moore
119 Arbor Drive
Manteo, NC 27954

For Respondent: Heather H. Freeman
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

ISSUE

Did the Respondent deprive Petitioner of property or act erroneously when it denied claims for Petitioner's dependent for substance abuse treatment at a wilderness treatment program?

RELEVANT STATUTES AND POLICIES

(including but not limited to the following)

N.C. Gen. Stat. Chap. 135; N.C. Gen. Stat. Chap. 150B, Article 3; and the State Health Plan PPO Benefits Booklet.

EXHIBITS

For the Respondent: Exhibits 1-6

WITNESSES

For the Petitioners: Coy Tillett

For the Respondent: Donna Williams, Appeals Team Lead, BCBS of North Carolina

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in this case.

FINDINGS OF FACTS

1. Respondent is an agency of the State of North Carolina, and offers health care benefits to eligible active and retired employees and their enrolled dependents in accordance with the applicable North Carolina General Statutes, the benefit booklet for Respondent's preferred provider organization (hereinafter "PPO") plan, and Respondent's health care policies.

2. At all times relevant to the issues in this contested case, Petitioner was a member of Respondent's Standard PPO plan. Isaac Moore is the son of Petitioner in this matter, and is a covered dependent under the Petitioner's health care coverage with the Respondent.

3. Blue Cross Blue Shield of North Carolina (“BCBSNC”) is the claims processing contractor for the State’s PPO plan.

4. On or about June 1, 2013, Isaac Moore was admitted by the Petitioner to Four Circles Recovery Center, a wilderness program for young adults, for substance abuse treatment.

5. Four Circles contacted BCBSNC Customer Service after Isaac Moore’s admittance and inquired about coverage for intensive outpatient services for substance abuse treatment and specifically about procedure code H1005. BCBSNC Customer Service informed Four Circles that procedure code H1005 was non-covered.

6. Four Circles submitted claim forms to BCBSNC on behalf of Isaac Moore for dates of service June 1, 2013 to July 12, 2013 that included procedure code H1005 for intensive outpatient substance abuse treatment.

7. Coverage by the Respondent for intensive outpatient treatment of chemical dependency and/or substance abuse issues requires prior review and certification by ValueOptions, Respondent’s Mental Health and Substance Abuse Case Manager.

8. Petitioner and Four Circles failed to request prior approval and certification from ValueOptions for Isaac Moore’s stay and treatment at Four Circles. As a result, BCBSNC denied coverage for the treatment at issue for a lack of prior approval and certification.

9. On or about September 6, 2013, Four Circles submitted an internal appeal to BCBSNC on behalf of Isaac Moore for coverage of intensive outpatient substance abuse treatment at Four Circles for dates of service June 1, 2013 to July 12, 2013.

10. During the internal appeal, BCBSNC administratively waived its prior review and certification denial and requested that ValueOptions retroactively review the request for certification on behalf of Isaac Moore for coverage of treatment at Four Circles for dates of service June 1, 2013 to July 12, 2013.

11. Upon contacting Four Circles as part of its review, ValueOptions was informed that Isaac Moore was in a wilderness program at Four Circles during dates of service June 1, 2013 to July 12, 2013, but that Four Circles billed those services as intensive outpatient services.

12. Four Circles is not licensed to provide treatment for intensive outpatient services, residential treatment care, or for partial hospital programs. Four Circles is only licensed for day treatment services.

13. Respondent State Health Plan does not provide health benefit coverage for care that the provider cannot legally provide.

14. ValueOptions determined that Four Circles was not licensed to provide the services requested on behalf of Isaac Moore, and accordingly did not retroactively approve or certify the care for Isaac Moore at Four Circles for dates of service June 1, 2013 to July 12, 2013.

15. Petitioner's family took Isaac Moore to Four Circles and called soon after. They received no word that there was a problem. If they had been informed by Four Circles that there was a problem, they would have returned to get him.

16. Under the What is not Covered Section of the State Health Plan's Benefits Booklet, it states that the Plan "does not cover services, supplies, drugs or charges" for "care that the provider cannot legally provide or legally charge or is outside the scope of license or certification." (See Respondent's Exhibits 3 and 4.)

17. On November 14, 2013, BCBSNC denied the request for coverage on behalf of Isaac Moore for substance abuse treatment at Four Circles for dates of service June 1, 2013 to July 12, 2013. The basis for the denial, as set forth in the November 14, 2013 Notice from the State Health Plan, was contractual and determined by the benefits as set forth in the applicable Benefits Booklets.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. Petitioner timely filed the petition for contested case hearing. The parties received proper notice of the hearing in the matter.

2. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.

3. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).

4. With N.C. Gen. Stat. Chapter 135, the General Assembly created an optional State Health Plan for the benefit of its state employees, retired employees and their eligible dependents. Pursuant to N.C. Gen. Stat. Chapter 135, Respondent is to provide comprehensive medical coverage under a group plan and benefits are to be provided under contracts between the Plan and the claims processor.

5. Respondent's State Health Plan Benefit Booklet for the Standard PPO Plan sets forth the benefits available to members. Four Circles is not licensed to provide intensive outpatient substance abuse treatment or services to State Health Plan members or their dependents. The preponderance of the evidence supports the conclusion that Petitioner's health plan does not cover services for care outside the scope of a provider's license.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Final Decision.

FINAL DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency.

Based on those conclusions and the facts in this case, the Undersigned holds that Petitioner failed to carry her burden of proof by a greater weight of the evidence that Respondent acted erroneously when it denied claims for Petitioner's dependent for treatment at a wilderness treatment program. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent to the ultimate issue, and as such Respondent's denial of Petitioner's request for coverage on behalf of Isaac Moore must be and is affirmed.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This is the 7th day of August, 2014.

Augustus B. Elkins II
Administrative Law Judge