

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 INS 06546

<p>ARTHUR H PIERVINCENTI PETITIONER,</p> <p>v.</p> <p>NORTH CAORLINA STATE HEALTH PLAN BLUE CROSS BLUE SHIELD OF NORTH CAROLINA RESPONDENT.</p>	<p>FINAL DECISION</p>
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On June 24, 2016, Petitioner filed a contested case petition with the Office of Administrative Hearings appealing Respondent's April 26, 2016, denial of benefits for speech therapy services received by Petitioner's dependent from an out-of-network provider. On October 6, 2016, the undersigned conducted an administrative hearing in this case in Lenoir, North Carolina. Respondent submitted a proposed decision on November 2, 2016; because of facts gleaned at the hearing, this submission has been adopted. Petitioner also submitted a proposed decision. The record in the case is now closed.

APPEARANCES

For Petitioner: Arthur Piervincenti
107 Summerbrook Lane
Mooresville, NC 28117

For Respondent: Heather H. Freeman
Special Attorney General
North Carolina Department of Justice
Post Office Box 629
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ISSUE

Whether Respondent deprived Petitioner of property, acted erroneously, acted arbitrarily or capriciously, or failed to act as required by law or rule when it denied coverage for speech therapy services provided to his dependent as non-covered services under Petitioner's Consumer-Directed Health Plan PPO plan?

RELEVANT STATUTES AND POLICIES

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

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: Exhibit 1

For Respondent: Exhibits 1-7

WITNESSES

For Petitioner: Arthur H. Piervincenti

For Respondent: Connie Rominger, Medical Team Lead, Appeals, Blue Cross Blue Shield of North Carolina

FINDINGS OF FACT

1. All parties are properly before the Court and the Court has jurisdiction over the parties and the subject matter.

2. With N.C. Gen. Stat. Chapter 135, the General Assembly created an optional State Health Plan for the benefit of its eligible state employees, teachers, and retirees, and their eligible dependents.

3. Respondent (or the “Plan”), is an agency of the State of North Carolina, and offers healthcare benefits to eligible active and retired state employees and teachers and their enrolled dependents, in accordance with the applicable North Carolina General Statutes; the benefit booklets for Respondent’s preferred provider organization (hereinafter “PPO”) plans; and Respondent’s healthcare policies.

4. Blue Cross Blue Shield of North Carolina (“BCBSNC”) is the third-party administrator for Respondent’s healthcare plans. As Respondent’s third-party administrator, BCBSNC processes Plan members’ claims and administers internal appeals submitted by Plan members on behalf of the State Health Plan.

5. At all times relevant to the issue in this contested case, Petitioner was enrolled in Respondent’s Consumer-Directed Health Plan (“CDHP”) PPO plan, and his dependent was a covered person under the CDHP PPO plan from July 1, 2015 through December 31, 2015.

6. From July 2015 through December 2015, Petitioner’s dependent received speech therapy services from an out-of-network provider. Petitioner submitted claims and copies of the out-of-network provider’s invoices to BCBSNC for payment of those speech therapy services. The claims and invoices submitted to BCBSNC by Petitioner listed specific codes that identified

the diagnoses given and the procedures or treatment provided for the speech therapy services received by Petitioner's dependent. Specifically, the claims and invoices listed diagnosis codes 315.32 "Mixed Receptive Expressive Language Disorder"; 315.39 "Developmental Articulation and Phonological Disorder"; F80.0 "Mixed Receptive Expressive Language Disorder"; and F80.2 "Articulation Disorder", as well as procedure codes 92523, 92507, 92508 and 99080. (Respondent's Exhibit 3)

7. BCBSNC denied coverage of the speech therapy services for Petitioner's dependent as non-covered services under Petitioner's CDHP PPO plan.

8. Petitioner filed an internal appeal of the denial of coverage with BCBSNC. The denial of coverage for the speech therapy services for Petitioner's dependent was upheld on internal appeal by BCBSNC and Petitioner was notified by letter dated April 26, 2016.

9. In the April 26, 2016 letter, BCBSNC notified Petitioner that the denial of coverage for the speech therapy services received by Petitioner's dependent from July 2015 through December 2015 was upheld because Petitioner's CDHP Benefits Booklet states that "speech therapy for stammering, stuttering, or developmental delay"; "treatment of speech, language, voice, communication and/or auditory processing disorder"; and, "services, supplies drugs or equipment used for the control or treatment of stammering or stuttering" is not covered under Petitioner's CDHP PPO plan. (Respondent's Exhibit 1)

10. Benefits Booklets specific to each PPO plan offered by the State Health Plan are made available to all State Health Plan members, including Petitioner, during each plan year. The 2015 CDHP Benefits Booklet, revised June 24, 2015, and the 2015 CDHP Benefits Booklet, revised August 10, 2015, applied to the dates of service at issue in this case.

11. On page 18 of the 2015 CDHP Benefits Booklet, revised June 24, 2015, in the "Covered Service" section it states that "Covered services described on the following pages are available at both the in-network and out-of-network benefit levels, when medically necessary, **unless otherwise noted.**" (Emphasis added) On page 18 of the 2015 CDHP Benefits Booklet, revised June 24, 2015, "Covered Service" section, it further states that "Exclusions and limitations may apply to your coverage. Service-specific exclusions are stated along with the benefit description in 'Covered Services.' Exclusions that apply to many services are listed in 'What Is Not Covered?' To understand the exclusions and limitations that apply to each service, read 'Covered Services,' 'Summary of Benefits,' and 'What is Not Covered?'" The same language is stated on page 18 in the 2015 CDHP Benefits Booklet, revised August 10, 2015. (Respondent's Exhibits 2A and 2B)

12. On page 32 under "Therapies" in the "Covered Services" section of Petitioner's 2015 CDHP Benefits Booklet, revised June 24, 2015, speech therapy is included in "Short-Term Rehabilitative Therapies" and it states that Petitioner's CDHP PPO plan only covers speech therapy "for treatment of conditions that are expected to result in significant clinical improvement in a member's condition." This section of the 2015 CDHP Benefits Booklet, revised June 24, 2015, also lists specific therapies that are excluded from coverage under Petitioner's CDHP PPO plan. Under "Therapy Exclusions" it states that "Speech therapy for stammering, stuttering, or

developmental delay” and “Treatment of speech, language, voice, communication and/or auditory processing disorder” is excluded from coverage under Petitioner’s CDHP PPO plan. Further, on page 52 in the “What is not Covered” section of the 2015 CDHP Plan Benefits Booklet, revised June 24, 2015, it states that Petitioner’s health benefit plan does not cover “Services, supplies, drugs or equipment used for the control or treatment of stammering or stuttering.” The same language is stated on pages 32 and page 52 in the 2015 CDHP Benefits Booklet, revised August 10, 2015. (Respondent’s Exhibits 2A and 2B)

13. On or about June 24, 2016, Petitioner filed a Petition for Contested Case hearing challenging the denial of coverage for his dependent’s speech therapy services by Respondent.

14. At hearing, Petitioner submitted a letter and medical record progress notes from the out-of-network provider who provided the speech therapy services to his dependent. In the letter, the provider stated that Petitioner’s dependent “has not developed his speech and language skills in the normal pattern and with the normal development of a typical child”, but later stated that his “disorder is not developmental in nature.” In the medical record progress notes, the provider listed his diagnosis as “315.32 Mixed receptive-expressive language disorder” and “315.39 Developmental articulation and phonological disorder.” The medical record progress notes also reference the “Journal of Developmental Science.” (Petitioner’s Exhibit 1)

15. Connie Rominger, Medical Team Lead in the BCBSNC Appeal Department, testified that Petitioner’s CDHP PPO Plan does not cover services or treatment that are specifically excluded from coverage under his plan, even if considered medically necessary.

16. Rominger further testified that BCBSNC is required to review all claims and apply the specific plan benefits according to the diagnosis and procedure codes submitted on the claims forms. The universal descriptions of diagnosis codes, used by all insurance and healthcare companies, as well as providers, are provided in the ICD code manual. The ICD-9 code manual applied to the claims for the dates of service at issue from July 2015 through September 2015. (Respondent’s Exhibit 5) The ICD-10 code manual applied to the claims for the dates of service at issue from October 2015 through December 2015. (Respondent’s Exhibit 6) The universal descriptions of procedure or “cpt” codes, used by all insurance and healthcare companies, as well as providers, are provided in the CPT code manual. The 2015 CPT code manual applied to the claims for all dates of service at issue from July 2015 to December 2015. (Respondent’s Exhibit 4)

17. Diagnosis codes 315.32 and 315.39 are located under the “Mental, Behavioral and Neurodevelopmental Disorders” section, specifically in the “Developmental speech or language disorder” section of the ICD-9 Manual. Diagnosis code 315.32 is described as “Mixed receptive-expressive language disorder”; “Central auditory processing disorder” and 315.39 is described as “Other”; “Developmental articulation disorder”; “Dyslalia”; “Phonological Disorder” in the ICD-9 Manual. (Respondent’s Exhibit 5)

18. Diagnosis codes F80.0 and F80.2 are located under the “Persuasive and specific developmental disorders (F80-F89)” section, specifically the “F80 “Specific developmental disorders of speech and language” section of the ICD-10 Manual. Diagnosis codes F80.0 is

described in the ICD-10 manual as “Phonological disorder”; “Dyslalia”; “Functional speech articulation disorder”; “Lalling”; “Lisping”; “Phonological developmental disorder”; “Speech articulation developmental disorder”; and F80.2 is described as “Mixed receptive language disorder”; “Developmental dysphasia or aphasia, receptive type”; “Developmental Wernicke’s aphasia” in the ICD-10 Manual. (Respondent’s Exhibit 6)

19. The 2015 CPT code manual describes cpt code 92523 as used to report the “evaluation of speech production, receptive language, and expressive language abilities”; cpt code 92507 as the “treatment of speech, language, voice, communication and/or auditory processing disorder, individual”; cpt code 92508 as “treatment of speech, language, voice, communication and/or auditory processing disorder, group 2 or more individuals”; and, cpt code 99080 as “special reports such as insurance forms, more than the information conveyed in the usual medical communications or standard reporting form.” (Respondent’s Exhibit 4)

20. The claims forms and invoices submitted by Petitioner to BCBSNC, as well as the provider’s letter and medical progress notes and other evidence at hearing, demonstrate that the speech therapy services received by Petitioner’s dependent were provided as therapy for “stammering, stuttering, or developmental delay” and for the “treatment of speech, language, voice, communication and/or auditory processing disorder.”

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter.

2. Petitioner has the burden of proof, by a preponderance of the evidence, regarding the issues presented in this contested case. N.C. Gen. Stat. § 150B-34(a).

3. 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 healthcare coverage under optional benefit plans and benefits are to be provided under contracts between the Plan and the third-party administrator. BCBSNC is the Plan’s third-party administrator.

4. Respondent’s 2015 CDHP PPO plan Benefits Booklets set forth the benefits available to Petitioner and his dependent during plan year 2015.

5. Petitioner’s CDHP PPO plan excludes speech therapy services for the treatment of “Speech therapy for stammering, stuttering, or developmental delay” and “treatment of speech, language, voice, communication and/or auditory processing disorder.” Petitioner’s CDHP PPO plan further excludes “services, supplies, drugs or equipment used for the control or treatment of stammering or stuttering.”

6. The claims forms and invoices submitted by Petitioner to BCBSNC, as well as the out-of-network provider’s letter and medical progress notes and other evidence at hearing, demonstrate that the speech therapy services received by Petitioner’s dependent were provided as

therapy for “stammering, stuttering, or developmental delay” and “treatment of speech, language, voice, communication and/or auditory processing disorder” and are excluded from coverage under Petitioner’s CDHP PPO plan.

7. A preponderance of the evidence shows that Petitioner did not meet his burden of proving that Respondent deprived Petitioner of property; acted erroneously; acted arbitrarily or capriciously; or failed to act as required by law or rule, when Respondent denied coverage for speech therapy services provided to his dependent as non-covered services under Petitioner’s CDHP PPO Plan.

ACKNOWLEDGMENT

It is acknowledged that whenever, in this document, reference is made to the undersigned, the undersigned Judge, or the Court, reference is being made to the undersigned Administrative Law Judge with the Office of Administrative Hearings.

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

FINAL DECISION

The undersigned hereby finds proper authoritative support of the Conclusions of Law noted 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 the foregoing Findings of Fact and Conclusions of Law, the undersigned holds that Petitioner failed to carry his burden of proof by a preponderance of the evidence regarding the issues presented in this contested case. It is, hereby, **ORDERED** that Respondent’s denial of coverage for speech therapy services provided to Petitioner’s dependent 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 Statute § 150B-45, 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 where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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.** In conformity with the Office of Administrative Hearings’ rule, 26 N.C. Admin. Code 03.0102, 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.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. 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 the 22nd day of November, 2016.

J Randall May
Administrative Law Judge