

BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

IN THE MATTER OF THE REQUEST
 BY JOHN GRISTE FOR A HEARING
 BEFORE THE SUPERINTENDENT
 ON AN ADVERSE DETERMINATION
 OF BLUE CROSS BLUE SHIELD OF
 NEW MEXICO

JOHN GRISTE,

Grievant,

v.

BLUE CROSS BLUE SHIELD OF
 NEW MEXICO,

Respondent.

CONFIDENTIAL

DOCKET NO. 2022-0080

ORDER GRANTING REQUEST FOR EXPEDITED HEARING
ON AN ADVERSE DETERMINATION

THIS MATTER comes before the Superintendent of the New Mexico Office of Superintendent of Insurance (“Superintendent” and “OSI,” respectively), upon the request of Grievant John Griste, M.D. (“Dr. Griste”) for a hearing to reverse an adverse determination made by Blue Cross Blue Shield of New Mexico (“BCBSNM”) that denied coverage for consultation and treatment with an out-of-network ophthalmologist located in Florida. The Superintendent, being sufficiently informed, hereby **FINDS AND CONCLUDES:**

INTRODUCTION

1. The Superintendent has jurisdiction over the grievance in this matter pursuant to the New Mexico Insurance Code, NMSA 1978, Sections 59A-1-1 through 59A-62-11 (1984), including the Patient Protection Act, NMSA 1978, Sections 59A-57-1 through 59A-57-11 (1998).

2. The circumstances related in this Order are supported by the Managed Health Care Bureau (“MHCB”) file on this grievance, which is available in full to Dr. Griste and BCBSNM upon request.

BACKGROUND

3. At all relevant times, Dr. Griste was a covered member under BCBSNM’s Blue Community Gold HMOSM 206 Plan (“Plan”). (Summary of Benefits and Coverage Page 1 of 8)

4. Dr. Griste has requested consultation and treatment with Dr. Janet Davis of the Bascom Palmer Eye Institute located in Miami, Florida. Dr. Davis is not an in-network doctor under BCBSNM’s Plan. Dr. Griste’s eyesight is deteriorating. (Complaint filed at OSI Page 2 of 3)

5. 13.10.17.7(C) NMAC defines “adverse determination” as any of the following:

- (1) any rescission of coverage (whether or not the rescission has an adverse effect on any particular benefit at the time); [or]
- (2) a denial, reduction, or termination of, or a failure to make full or partial payment for a benefit including any such denial, reduction, termination, or failure to make payments, that is based on a determination of a covered person’s eligibility to participate in a health benefits plan; or
- (3) a denial, reduction or termination of, or a failure to make full or partial payment for a benefit resulting from the application of any utilization review; or
- (4) failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental, or investigational or not medically necessary or appropriate.

PROCEDURAL HISTORY

6. In its initial denial on May 5, 2022, BCBSNM stated: “You have an inflamed middle layer of the eye. The request cannot be approved. There are in-network doctors within a distance that is [sic] similar to the doctor you want to see.” BCBSNM then listed four doctors in the Albuquerque-Santa Fe area. (Initial denial Page 1)

7. Dr. Griste timely asked for a review of the denial, which was received by BCBSNM on May 26, 2022. (Communication from BCBSNM with subject line “We’re reviewing your appeal” Page 1 of 2)

8. BCBSNM was required to complete this first level review within 30 days of receipt of a request for a standard review and within 72 hours of receipt of a request for an expedited review, pursuant to 13.10.17.14(F) NMAC.

9. In a letter dated August 4, 2022, BCBSNM notified Dr. Griste that the initial denial was upheld. This response violated 13.10.17.14 (H) NMAC, which states:

H. Failure to comply with deadline. If the health care insurer fails to comply with the deadline for completion of an internal review, unless such deadline is postponed by the grievant, the requested health care service shall be deemed approved, provided that the requested health care service reasonably appears to be a covered benefit under the applicable health benefits plan.

10. The letter stated that Dr. Griste had asked to see an out-of-network uveitis specialist/ophthalmologist. The letter stated that because “[t]here are in-network doctors in your area,” an “out-of-network visit is not a covered benefit.” The decision was based on the “2022 Blue Cross and Blue Shield of New Mexico Blue Community Gold Health Maintenance Organization (HMO) Benefit Book, page 25. ‘Nonparticipating Provider Services.’” The reviewer was a radiologist, Paul Schroeder, M.D. (Communication from BCBSNM with subject line “Your review results” Page 1 of 5)

11. On September 27, 2022, Dr. Joshua Brown, Dr. Griste’s primary care physician, timely requested a review by an Independent Review Organization (“IRO”), using BCBSNM’s Request Form B. *See* 13.10.15(B)(7-8) NMAC (requiring that notice of first level review decision include telling grievant that an IRO may be requested within four months of receipt of that notice

and that an internal review panel may be requested within five days of receipt of that notice). Dr. Brown stated on Request Form B that Dr. Griste's condition was "life-threatening."

12. On October 5, 2022, Dr. Griste timely filed a Complaint with OSI, in which he requested an External Review. On that same date, he timely filed a request for review by an IRO, in which he wrote that his "hope" was "to see a world-renowned specialist." (Page 1 of Request for Review by an Independent Review Organization (IRO) of an Adverse Determination)

13. On October 10, 2022, the IRO, Physio Solutions, affirmed the BCBSNM decision. A doctor board-certified in ophthalmology concluded: (IRO Determination Pages 4-5 of 6)

It was noted that the patient reported some side effects from the steroids and therefore wanted to see a tertiary care specialist or uveitis specialist. However, this was sent to review and ultimately denied as the patient requested to see a specialist who was out of network despite that there are specialists available in the network. The appeal noted that the patient has seen 4 specialists but would like a second opinion. While the patient has posterior uveitis and would benefit from a uveitis specialist, the documentation does not demonstrate the necessity of utilizing an out of network provider when there are in network specialist options. As such, this request is not medically necessary, and the decision is upheld.

14. The IRO noted that "[Dr. Griste's] reason for the second opinion from a leading authority" was that his eye doctor and his rheumatologist disagreed on his "next therapy option: Methotrexate versus Humira." (*Id.* Page 2 of 6)

15. On October 17, 2022, Dr. Griste timely requested a hearing before the Superintendent.

DISCUSSION AND DETERMINATION BY THE SUPERINTENDENT

16. The applicable law is 13.10.17.24 NMAC, titled "SUPERINTENDENT'S HEARING PROCEDURES FOR ADVERSE DETERMINATIONS," which states in relevant part:

B. Review of request for hearing. Upon receipt of a request for a hearing, the superintendent will review the request and may grant a hearing if the following criteria are met:

- (1) the grievant has exhausted the internal review process or is not required to exhaust the internal review process and, if applicable, the external IRO review process;
- (2) the grievant has timely requested review by the superintendent;
- (3) the grievant has provided a signed release and all forms and documents required to process the request, and
- (4) the health care service that is the subject of the request reasonably appears to be a covered benefit under the applicable health benefits plan.

17. Dr. Griste has clearly met the first three requirements: 1) he exhausted his remedies within BCBSNM, and he exhausted the IRO review process; 2) he timely requested review by the Superintendent; and 3) he provided the required documents.

18. As to the fourth factor, the Record presents conflicting views: those of Dr. Griste's doctors versus those of the reviewing doctors, as well as the disagreement between Dr. Griste's ophthalmologist and his rheumatologist. In addition to the above reasons in the Record that support covering the requested services, Dr. Brown, Dr. Griste's primary care physician, stated on the BCBSNM internal appeal request form: "He is unable to get the treatment he needs in NM and it is vital that he sees Dr. Janet Davis in Miami, FL as she is an expert on his condition." (Page 1 of BCBSNM Internal Appeal Request Form)

19. These conflicting views and the evidence presented to the Superintendent raise the issue of whether the services of Dr. Davis are, or should be, a covered benefit, and they serve as a step in the decision-making process that allows Dr. Griste to present his case before a hearing panel. That is, the information provided to MHCB creates a factual dispute regarding medical necessity, meriting a hearing before an OSI-appointed panel of hearing officers.

IT IS THEREFORE ORDERED:

- A.** Good cause exists to grant Dr. Griste's request for a hearing, and that request is therefore **granted.**
- B.** The hearing shall be conducted in accordance with 13.10.17.24 NMAC, SUPERINTENDENT'S HEARING PROCEDURES FOR ADVERSE DETERMINATIONS.
- C.** Pursuant to 13.10.17.24(E) NMAC: 1) the MHCB shall coordinate with the Parties (*i.e.*, Dr. Griste and BCBSNM) to set an informal hearing under NMSA 1978, Section 59A-4-18; and 2) because settlement of the case is encouraged, the MHCB shall attempt to informally resolve the grievance in accordance with NMSA 1978, Section 12-8-10(A)(2).
- D.** The Superintendent may designate a hearing officer who is an attorney licensed in New Mexico to conduct the hearing pursuant to 13.10.17.24(H) NMAC. The hearing officer will conduct the hearing from the OSI office in Santa Fe. Hearing participants may attend the hearing in person or via Zoom. The hearing shall be stenographically recorded at OSI's expense, pursuant to 13.10.17.24(H)(5) NMAC.
- E.** The Superintendent may also designate two independent co-hearing officers who are licensed health professionals to participate in the hearing, pursuant to 13.10.17.24(H)(1) NMAC, and "at least one of them shall practice in a specialty that would typically manage the case that is the subject of the grievance." *Id.*
- F.** Pursuant to 13.10.17.24(H)(2) NMAC, the Superintendent or his designated attorney-hearing officer shall regulate the hearing and perform all acts and take all measures necessary for the proper and efficient conduct of the hearing, including but not limited to:

(a) requiring the production of additional records, documents and writings relevant to the subject of the grievance; (b) excluding any irrelevant, immaterial or unduly repetitious evidence; and (c) if either Dr. Griste or BCBSNM fails to appear at the hearing, the matter will be adjourned until a future date, with notice of adjournment given to the Parties.

G. The three hearing officers shall provide the Superintendent with a written Recommended Decision that includes specific findings of fact and conclusions of law in support of their Recommended Decision regarding the issues. A dissenting opinion to the Recommended Decision is allowed.

H. The formal rules of discovery do not apply to the conduct of the hearing; however, the Parties shall comply with instructions from OSI staff regarding the exchange of witness and exhibit lists, scheduling, or other administrative matters.

I. All Parties have the right to be assisted or represented by counsel or by another person pursuant to 13.10.17.24(H)(6)(b) NMAC.

J. The Parties shall file notices or entries of appearance with the OSI Records/Docketing Bureau that set forth the name and contact information for their representatives or attorneys as soon as that information is available. Any pleadings or other documents that are to be part of the record in this case must be submitted through the OSI eDocket system, <https://edocket.osi.state.nm.us/home>, and filed under the docket number for this case. For help filing documents with OSI Records/Docketing, Parties may call (505) 827-4499 or email OSI-docketfiling@state.nm.us. Properly filed pleadings or other documents are the responsibility of the Party making the filing.

K. The Parties may contact the Managed Health Care Bureau at (505) 827-3928, or by email at mhcb.grievance@state.nm.us with any questions or requests for help throughout this process.

DONE AND ORDERED this 19th day of October, 2022.

SUPERINTENDENT OF INSURANCE

A handwritten signature in black ink, appearing to read 'J. Catechis', is positioned above a horizontal line.

**JENNIFER A. CATECHIS, Deputy Superintendent
for Superintendent Russell Toal**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October 2022, I filed the foregoing *Order Granting Request for Expedited Hearing on an Adverse Determination* through the OSI's e-filing system, which caused the individuals indicated below to be served by electronic means.

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