

**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. 151200-001**

**Blue Cross Blue Shield of Michigan**  
**Respondent**

---

**Issued and entered**  
**this 4<sup>th</sup> day of January 2016**  
**by Randall S. Gregg**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On December 8, 2015, ██████████ (Petitioner) filed with the Director of Insurance and Financial Services a request for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The request concerns a claim denial issued by her health insurer, Blue Cross Blue Shield of Michigan (BCBSM). After a preliminary review of the material submitted, the Director accepted the Petitioner's request on December 15, 2015. The Director notified BCBSM of the request and asked for the information used to make its final adverse determination. BCBSM provided its initial response on December 17, 2015 and submitted additional material later in December.

The issue in this external review can be decided by a contractual review. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner's BCBSM plan provides benefits when an individual receives medical care from members of an exclusive provider organization, or "EPO." No benefits are provided if an individual receives care, other than emergency treatment, from a provider not in the EPO. The plan's benefits are defined in the *BCBSM Metro Detroit EPO Silver Benefits Certificate*. The Petitioner applied for the BCBSM coverage on January 28, 2015. Her coverage became effective on February 1, 2015.

On February 19, 2015, the Petitioner had surgery, a bilateral bunionectomy, on her feet. The surgery was performed by ██████████ at Henry Ford ██████████. The

amount charged was \$11,793.31. BCBSM denied coverage because Henry Ford [REDACTED] Hospital is not a provider in BCBSM's EPO network.

The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of the process, on November 18, 2015, BCBSM issued a final adverse determination affirming its denial of coverage. The Petitioner now seeks the Director's review of that adverse determination.

### III. ISSUE

Was BCBSM correct to deny coverage for the Petitioner's surgery at Henry Ford [REDACTED] Hospital?

### IV. ANALYSIS

#### Petitioner's Argument

In a statement submitted with her request for an external review, the Petitioner wrote:

Please be advised that I did my due diligence. I specifically asked the insurance agent, [REDACTED], who sold me the policy to check all of this information for me. She was reading it off of a provider's reference list and attests to this in writing. She confirmed the doctor and the hospital, even giving me the address of this particular hospital and a good word about it, as I had never heard of it before. I had no reason to doubt [REDACTED] as she had also indicated to me that she was familiar with this area having once lived in Michigan. I called the doctor's office billers several times. After reassuring me that this was their line of work and that they were required as part of their job to get authorization from insurance before the doctor would perform surgery I felt better. Even so, I called Blue Cross Blue Shield. I told them the date to make sure that there was no "pre-existing" stipulation or no time limit as I was new to the policy. I'm sure I told them the place and date of the surgery and also the procedure codes from the doctor's office along with the common name of the type of surgery. They told me the parameters of the insurance policy and what was covered and what I had to pay, which confirmed the information I had gotten from the agent. I know that there is nothing else I could have done differently given the time frame around which I acquired the insurance and had the surgery done.

With her request for external review, the Petitioner included a copy of her appeal letter to BCBSM. The Petitioner also furnished a written statement from the insurance agent in [REDACTED] [REDACTED] who sold the BCBSM coverage to her. In that statement the agent wrote:

On Jan 28, 2015, [Petitioner] contacted our agency for health insurance. Based on criteria set in place by [healthcare.gov](http://healthcare.gov), we secured a policy for her through Blue Cross/Blue Shield of MI. Plan name: BC/BS of MI Metro Detroit EPO Silver Extra. Plan ID#: 15560MI0890002. As with all clients, a check was performed on the website for network doctors and facilities. Henry Ford McComb [sic] @ [REDACTED] was a listed facility, in the network.

The hospital is presenting an invoice to the patient for their services, stating that they are not a network provider.

At the time of enrollment, this hospital was listed in the EPO network for this plan and this location.

### Respondent's Argument

In the final adverse determination, BCBSM's representative wrote:

You are covered under the *Blue Cross Metro Detroit EPO Silver Benefits Certificate*. As described on page 10, you have EPO coverage under this certificate. EPO coverage uses an Exclusive Provider Organization (EPO) provider network. BCBSM pays for covered services rendered only when they are covered under your *Certificate* and performed by a provider who is in the EPO network. Out-of-network services are not covered.

I have confirmed that Henry Ford [REDACTED] Hospital is not a member of the EPO network, and was not on the date of service. Based on the terms of your health care plan, because the provider is not a member of the EPO network, your services are not payable.

In addition, I investigated your concerns regarding the procedure codes reported by Henry Ford [REDACTED] Hospital. The most recent submitted claim from Henry Ford [REDACTED] Hospital used procedure codes 28296 (correction of hallux valgus with metatarsal osteotomy) and 28270 (capsulotomy, metatarsophalangeal joint, each), which you stated your doctor had told you he would be performing. However, to clarify, the services denied payment because they were not performed by an EPO provider.

I understand that you may have received incorrect information from non-BCBSM personnel as to the EPO network participation status of Henry Ford [REDACTED] Hospital. However, BCBSM must administer benefits according to the terms of your EPO health care plan. Out-of-network services are not payable, and BCBSM cannot make an exception on your behalf.

### Director's Review

The Petitioner believes that BCBSM is required to provide coverage for her surgery. The Petitioner's argument is based on her assertion that an individual outside BCBSM (the insurance agent and the staff of her doctor's office) and BCBSM staff communicated incorrect information to her about her coverage.

The *BCBSM Metro Detroit EPO Silver Benefits Certificate* includes this provision on page 147:

#### ***Reliance on Verbal Communications***

Verbal verification of a member's eligibility for coverage or availability of benefits is not a guarantee of payment of claims. All claims are subject to a review of the diagnosis reported, medical necessity verification, and the availability of benefits at the time the claim is processed, as well as to the conditions, limitations, exclusions, maximums, deductibles and copayments under your coverage.

In conducting reviews under the Patient's Right to Independent Review Act (PRIRA), the Director is limited to resolving questions of medical necessity and determining whether an insurer's final adverse determination is consistent with the terms of the relevant policy or certificate of coverage. See MCL 550.1911(13). Under the PRIRA, the Director has no authority to amend the terms of an insurance policy to require an insurer to provide coverage that is inconsistent with the policy's actual benefits. In this review, the Director has addressed only issues that can be addressed under the PRIRA. The Petitioner may have other remedies outside of PRIRA for any complaints not specifically addressed within this Order.

The *EPO Silver Benefits Certificate* covers outpatient surgical services when the provider is part of the Exclusive Provider Organization (EPO) network. Henry Ford ██████████ Hospital is not part of the EPO network. Therefore, the Petitioner's surgery is not a covered benefit under the *EPO Silver Benefits Certificate*. The Director finds that BCBSM's denial of the February 19, 2015, medical services provided to the Petitioner at Henry Ford ██████████ Hospital is consistent with the terms of the certificate.

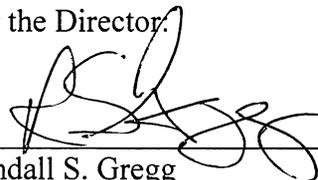
#### V. ORDER

The Director upholds BCBSM's final adverse determination of November 18, 2015. BCBSM is not required to provide coverage for the surgical services provided to the Petitioner at Henry Ford ██████████ Hospital on February 19, 2015.

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