

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. 151321-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 7th day of January 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On December 15, 2015, ██████████, on behalf of his minor 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 Director accepted the case for review on December 22, 2015.

The Petitioner receives health care benefits through a group plan that is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The benefits are described in BCBSM's *Community Blue Group Benefit Certificate LG and Rider CBD \$4,000-IN LG Community Blue Deductible Requirement For In-Network Services*. The Director notified BCBSM of the external review request and asked for the information used to make its final adverse determination. BCBSM provided its response on December 22, 2015.

The issue in this external review can be decided by a contractual analysis. 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 was born in February 2014. His medical condition required that he be fed with a special infant formula. The infant formula is a covered benefit under the Petitioner's BCBSM health plan.

On December 2, 2014 and January 7, 2015, the Petitioner's parents obtained the formula and filed claims with BCBSM for their purchase. BCBSM approved coverage and paid its approved amount of \$679.00 to the Petitioner's parents. Later, BCBSM requested a refund of the amount paid, asserting that its payment was made in error; the claims should have been applied to the Petitioner's deductible. BCBSM requested that the Petitioner's parents return the \$679.00 it had paid them.

The Petitioner appealed BCBSM's request for a refund of the \$679.00. At the conclusion of that process, BCBSM issued a final adverse determination dated October 23, 2015, affirming its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Should the claims for infant formula be allocated to the Petitioner's required deductible?

IV. ANALYSIS

BCBSM's Position

In its October 23, 2015 final adverse determination BCBSM stated that the Petitioner's claims are is subject to the in-network deductible required by the *Community Blue* certificate and related rider:

Covered services are covered at 100 percent of the approved amount only after the contractual cost-sharing requirement for the benefit year are met. You remain liable for the overpayment of the claim in the amount of \$679.00.

Your family is covered under the *Community Blue Group Benefit Certificate LG*. Page 92 of the *Certificate* under **Section 3: What BCBSM Pays For**, states that your family does have coverage for special infant formula for the treatment of metabolic diseases. However, as indicated on page 10 of the *Certificate* under **Section 2: What You Must Pay**, you are required to pay a deductible each calendar for covered services by in-network providers. *Rider CBD \$4,000-IN LG Community Blue Deductible Requirement For In-Network Services* amends your certificate to increase the in-network deductible requirement to \$4,000 for one member and \$8,000 for a family per benefit year.

With regard to the December 2, 2014, date of service, [Petitioner] had \$2,959.71 remaining for his individual deductible for the 2014 benefit year. As a result, when BCBSM reprocessed the claim, \$452.85 appropriately went toward the deductible for the 2014 benefit year. Similarly, for the January 7, 2015, date of service, [Petitioner] still had the entire \$4,000 remaining for his in-network deductible for the 2015 benefit year. Therefore, when BCBSM reprocessed the claim, \$226.15 correctly applied to his in-network deductible.

On February 12, 2015, BCBSM issued a check to you for the two dates of services in the amount of \$679.00 in error. Because [Petitioner] had not met his in-network deductible at the time the services were performed, the claims appropriately reprocessed and you remain responsible for the recovery request of \$679.00.

Petitioner's Position

In the external review request, the Petitioner's father wrote:

I wish to reverse how BCBSM requested a recovery of \$679.00 from a claim issued in February 2015. Our deductible had not been met when the checks were issued, which I was unaware of when I accepted the check. The claim was for 2 metabolic food requests from December 2014 and January 2015.

The deductible requirement was not mentioned on the application forms, or the original Explanation of Benefits. The overall process was to send in the application with the receipt and BCBSM would send a claim for what insurance would cover. The Appeals employee also put that I choose to waive a managerial level conference which I did not choose to waive.

The Petitioner's father also indicated that the infant formula was medically necessary and he believes that he should not be required to refund the \$679.00 paid by BCBSM.

Director's Review

There is no dispute that the infant formula is medically necessary for the Petitioner and is a covered benefit under the *Community Blue* certificate. The issue in this case is whether the infant formula is subject to the deductible requirements of the Petitioner's benefit plan.

The deductible requirement is described in Section 2 of the *Community Blue* certificate. A deductible is applied to all covered services. Exceptions are enumerated in Section 2:

You are not required to pay a deductible for the following:

- Covered services performed in an in-network physician's office, including presurgical consultations
- Covered mental health services performed in an in-network physician's office
- Services subject to a flat-dollar copayment requirement
- Services for the initial exam to treat a medical emergency or an accidental injury in the outpatient department of a hospital, urgent care center or physician's office
- Chiropractic spinal manipulation
- Prenatal and postnatal care visits
- Allergy testing and therapy

- Therapeutic injections
- Hospice care benefits
- Preventive care services (specific services are listed in Section 3 of your certificate)
- Certain care management services performed by select Michigan-based providers, as identified by BCBSM

We will not apply charges toward your in-network deductible if one of the following applies:

- The charges exceed our approved amount.
- The charges are for noncovered services.

None of these exceptions apply to infant formula or special medical foods. Consequently, BCBSM is correct that the Petitioner's infant formula is subject to the benefit plan's deductible requirement. The Director concludes that BCBSM's reprocessing was appropriate under the terms of the *Community Blue* certificate and its rider.

V. ORDER

The Director upholds BCBSM's final adverse determination of October 23, 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 Michigan 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