

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. 146453-001

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
this 18<sup>th</sup> day of March 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

On February 23, 2015, ██████████, authorized representative of ██████████ (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 Director accepted the request on March 2, 2015.

The Petitioner receives health care benefits through a group plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The benefits are defined in BCBSM's *Member Handbook for employees/retirees of Dykema Gossett*.

The Director notified BCBSM of the review and asked for the information used to make its final adverse determination. The Director received BCBSM's response on March 10, 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 has a history of varicose veins. On February 11, 2014 he had his varicose veins treated for the fifth time with endovenous ablation therapy. The procedure was performed as outpatient surgery under local anesthetic. The charge for the surgery was \$2,806.00. BCBSM denied coverage, ruling that, as the fifth varicose vein surgery, the procedure exceeded BCBSM's maximum frequency limitation.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM issued its final adverse determination on January 9, 2015, affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.

### III. ISSUE

Is BCBSM required to provide coverage for the Petitioner's February 11, 2014 endovenous ablation therapy?

### IV. ANALYSIS

#### BCBSM's Argument

In its final adverse determination to the Petitioner, BCBSM wrote:

Endovenous ablation therapy of incompetent vein, extremity, inclusive of all imagine guidance and monitoring, percutaneous, laser; first vein treated (procedure code 36478) is subject to a maximum frequency limit of four occurrences. Because the service in question exceeded the frequency limit, it is not covered and you remain responsible for charges in the amount of \$1,967.00.

As you know, your insurance provides coverage for most medically necessary services. It is stated on page 44 of the *Member Handbook for Employees/Retirees of Dykema Gossett* that "surgical procedures needed for the diagnosis and treatment of diseases and injuries are covered" under your insurance contract. However, even medically necessary services are subject to some coverage restrictions, which are described in BCBSM's *Benefit Package Report*. Here, although the surgical procedure *at issue* in this appeal (procedure code 36478) is a benefit under your contract, it is payable on a maximum of four occasions. This is supported by BCBSM Medical Policy which states that the payment frequency for this procedure is limited to "twice, per leg, per lifetime."

A review of the claims that have been reported to BCBSM under your contract confirms that, prior to the surgery now at issue, procedure code 36478 has been processed for payment on four other dates of service: December 7, 14, 21 and 31, 2014. Because of the frequency limitation that is a condition of your coverage, payment cannot be offered for your most recent procedure.

I do not dispute your physician's opinion that this surgery was medically necessary, and I understand that your health care providers deliberately staged your procedures as a progression of independent surgeries. I also understand the frustration that can result from unanticipated charges. However, BCBSM is

required to administer benefits based on the terms of your contract, and I am unable to make an exception on your behalf.

### Petitioner's Argument

In a letter addressed to DIFS, the Petitioner's authorized representative wrote:

[Petitioner] has a long history of bilateral lower extremity varicose veins, on both legs were it interferes with his day to day activities. Enclosed is a letter from [Petitioner] explaining his discomfort living with bulging varicose veins in both legs. [Petitioner] was not aware his benefits would only cover four occurrence regardless if it is medically necessary based on his physician's evaluation.

Enclosed are the evaluation notes from [REDACTED] in which he goes into greater detail as to why the fifth surgery is medically necessary. [Petitioner] was advised by his doctor that his vein surgeries should be done in several visits. He was advised that it would be better to not perform all required surgeries on both legs at the same time. Following that advice resulted in completing the procedures over several visits. If [Petitioner] had been aware of the limitation being asserted in this case he would have had the surgeries done in fewer visits.

### Director's Review

The Petitioner's *Member Handbook*, on page 44, allows coverage for surgical procedures when they are medically necessary. (BCBSM does not dispute the medical necessity of the procedure.) BCBSM's argument that Petitioner's surgery is not covered is based on what BCBSM describes as a "Benefit Package Report." Based on the material BCBSM submitted for this review, a Benefit package Report is a collection of documents which includes an "Explainer" and several "Policy Change or Certification" forms. These forms include the statement "Procedure codes 36475 and 36478 have a frequency maximum of four per lifetime, two per leg, per lifetime." There is no evidence that any of this material is shared with BCBSM members. In fact, the forms includes the instruction "Please share this information with others in your department. This information is for internal use only." (Emphasis in original.)

Since the exclusion BCBSM relied on to deny coverage is only available to BCBSM employees, it is difficult to understand how the Petitioner or his physician would know that coverage for a fifth varicose vein surgery was not available. The *Member Handbook*, which is distributed to members, does not include a provision that prior authorization is required for outpatient surgery. The *Member Handbook* does require prior authorization for hospitalization, inpatient behavioral health care, inpatient substance abuse treatment, applied behavioral analysis (ABA) therapy, and some prescription drugs. But no such requirement applies to outpatient surgery.

The Director finds that BCBSM's denial of coverage of the Petitioner's February 11, 2014 endovenous ablation therapy is not consistent with the terms of the *Member Handbook*.

**V. ORDER**

The Director reverses Blue Cross Blue Shield of Michigan's final adverse determination of January 9, 2015. As required by section 1911(17) of the Patient's Right to Independent Review Act, MCL 550.1911(17), BCBSM shall immediately approve coverage for the Petitioner's surgery. BCBSM shall, within seven days of providing coverage, furnish the Director with proof it has implemented this order.

To enforce this order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, toll free at (877) 999-6442.

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, P.O. Box 30220, Lansing, MI 48909-7720.

Annette E. Flood  
Director

For the Director



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Randall S. Gregg  
Special Deputy Director