

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. 149703-001

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
this 24<sup>th</sup> day of September 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

On September 4, 2015,  (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 request on September 11, 2015.

The Petitioner receives health care coverage through a group plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Director notified BCBSM of the request and asked for the information used to make its final adverse determination. BCBSM provided its response on September 21, 2015.

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 was diagnosed with sleep apnea in September 2014. The diagnosis was established after a sleep study on September 2, 2014. A second sleep study was conducted on September 25, 2014. The Petitioner's treatment plan called for him to use a continuous positive airway pressure (CPAP) machine while sleeping. The Petitioner subsequently submitted claims

for the sleep studies, CPAP machine and related supplies, and physician office visits. These services and supplies were provided between September 2, 2014 and July 30, 2015.<sup>1</sup>

BCBSM provided coverage for the sleep studies, physician office visits, the CPAP machine, and related supplies. In processing the claims, BCBSM assessed deductibles, copayments, and coinsurance charges totaling \$1,855.17.

The Petitioner appealed the cost sharing requirements through BCBSM's internal grievance process, arguing that the cost sharing charges were excessive. At the conclusion of the internal grievance process, BCBSM agreed to waive two months of the cost sharing requirements for the CPAP machine. BCBSM affirmed the other cost sharing requirements. BCBSM issued a final adverse determination dated July 2, 2015. The Petitioner now seeks a review of this determination by the Director.

### III. ISSUE

Did BCBSM correctly calculate the Petitioner's cost sharing requirements for his sleep apnea services and supplies?

### IV. ANALYSIS

#### Petitioner's Argument

In his request for an external review, the Petitioner wrote:

I am filing this Request for External Review based upon incorrect information supplied to me by Blue Cross, Blue Shield of Michigan's representative on 8-15-2014. On 8-15-2014 I called BCBS to find out what my financial responsibilities were for a Sleep Study. At that time I was told that all I would be responsible for would be 20% of the Approved amount of the Sleep Study only billed as my coinsurance. I however, was not told that BCBS requires two Sleep Studies, one to diagnose and then a second study to establish the treatment path. When I went for the second sleep study, I was told by the sleep clinic that it was unusual that an insurance company would insist on two studies and that most insurance companies only require one sleep study. I found out later that this was BCBS standard procedure. I was not advised when I inquired that this was the case.

Additionally, I was told that a CPAP machine rental and all consumable supplies

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1. Two of the Petitioner's claims (April 27 and July 30, 2015) were not presented to BCBSM to be considered in BCBSM's internal grievance process. Completion of the internal grievance process is a prerequisite for an external review by the Director. See MCL 550.1911(2)(c). Consequently, those claims are not a part of this external review.

required would be covered at 100% without deductible or co-pay.

After the two sleep studies I was diagnosed with sleep apnea and was prescribed a CPAP and all the required supplies. When I went to pick up the machine and supplies at [REDACTED] was required to pay for the CPAP rental and supply costs. This was rather embarrassing as I had to wait for Lincare to call BCBS and Lincare insisted that I pay them \$93.32 on the spot or I could not take home my CPAP and Supplies. I subsequently paid this \$93.32 so I could take home this equipment. I then called BCBS to find out what was going on. The BCBS representative looked up my file and told me that I was responsible for a deductible and co-pay on the CPAP rental and the supplies. I referred her to my 8-15-2014 conversation and she told me that BCBS would review the sound recording of this call and get back to me. When the BCBS representative [REDACTED] called me back on 11-25-2014 she said that they reviewed my 8-15-2014 phone call and she acknowledged that the information that I was given on 8-15-2014 was incorrect. She apologized and stated that to compensate me for my inconvenience that her supervisor had authorized her to cover my rental and supply costs for October and November.

This is where the problem lies. First I was never told that I would need to cover two sleep studies, and second I was told that my CPAP rental and supplies would be covered at 100% with no deductible or co-pay. If I would have known that I needed to pay for two sleep studies, then CPAP rental costs, and then supplies I would not have had these tests done and taken on this cost. Now I am burdened with these ongoing expenses as well as \$1042.80 for the two sleep studies.

At the present time my out of pocket expenses for two sleep studies, doctors costs, CPAP rental, and supplies have exceeded \$2,000.00 and they continue to grow every month....

### Respondent's Argument

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

The purpose of the conference was to discuss the diagnostic sleep study, office visit and medical supply services you received from September 2, 2014 to April 24, 2015. After review, our decision is maintained and you remain responsible for your total cost share amount of \$1,855.17.

On the referenced dates of service you were covered under the *Simply Blue Group Benefits Certificate SG*. On page 12 of your Certificate, under **Section 2: What You Must Pay, Copayment and Coinsurance Requirements, In-Network Provider Coinsurance** it states:

You are required to pay the following coinsurance for covered services provided by in-network providers:

- 20 percent of the approved amount for most covered services

*Rider SB \$2,000 SG Simply Blue Cost-Sharing Requirements* amends your Certificate to increase your in-network deductible, per calendar year for covered services to \$2,000 for one member. It also states that you have an in-network provider, flat-dollar copayment of \$60 for each office visit and office consultation with a specialist.

I confirmed that you satisfied your in-network deductible requirement for the calendar year of 2014. Therefore, your 20 percent coinsurance, totaling \$1,125.96, properly applied to the approved amount for the diagnostic sleep study and medical supply services you received in 2014. Furthermore, the office visits you had on September 15, 2014 and November 3, 2014, with [REDACTED] were subject to your office visit copayment requirement and the copayment amount of \$120.00 properly applied. Also, I confirmed that on the 2015 dates of service in which you received medical supplies from Lincare Inc. you had not satisfied your in-network deductible requirement. Therefore, the amount of \$609.21 properly applied to your deductible requirement.

To ensure all consideration was given, I reviewed the telephone calls you placed to Blue Cross Blue Shield of Michigan (BCBSM) on August 15, 2014, and the telephone calls you received from BCBSM on November 25, 2014. After review, I confirmed that the customer service representative (CSR) you initially spoke with on August 15, 2014, properly informed you of your correct sleep study cost share information and there was no information requested regarding the amount of sleep studies required.

Also, I reviewed the second call you placed to BCBSM on August 15, 2014, and regret the misinformation you were given by our CSR. I confirmed that the CSR informed you in the calls on November 25, 2014, that your out-of-pocket costs would be covered at 100 percent on a one-time basis for the medical supplies you purchased on October 15, 2014 and November 15, 2014, due to the misinformation previously given. Furthermore, the CSR informed you that you would be responsible for your contractually-obligated cost share for future claims.

### Director's Review

The Petitioner and BCBSM agree that BCBSM provided inaccurate information to the Petitioner regarding his cost sharing obligations. As a result, BCBSM has waived the cost sharing on two of the Petitioner's claims.

In conducting external reviews under the Patient's Right to Independent Review Act the Director is limited to resolving question 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).

The *Simply Blue* certificate and related rider provide that a deductible and a 20 percent coinsurance requirement applies to most covered services from in-network providers and that a \$60.00 office visit charge applies. BCBSM processed the Petitioner's claims in a manner consistent with those provisions. Consequently, the Director cannot require BCBSM to make any further adjustment to the Petitioner's cost sharing obligations.

The Director finds that BCBSM's application of cost share requirements for the September 2, 2014 to April 24, 2015 dates of service was consistent with the terms of the *Simply Blue* certificate and rider.

#### V. ORDER

The Director upholds BCBSM's July 2, 2015 final adverse determination.

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:



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Randall S. Gregg  
Special Deputy Director