STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

In the matter of:

[redacted],

Petitioner,

v **File No. 150208-001**

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 30th day of October 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

[redacted] (Petitioner) was aggrieved by a decision of her health plan, Blue Cross Blue Shield of Michigan (BCBSM), to apply cost sharing to a service she believed was not subject to cost sharing.

On October 5, 2015, she filed a request with the Director of Insurance and Financial Services for an external review of BCBSM's decision under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On October 12, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits through an individual plan that is underwritten by BCBSM. The Director immediately notified BCBSM of the external review request and asked for the information it used to make its final adverse determination. BCBSM furnished the information to the Director on October 19, 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 review by an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the BCBSM's *Blue Cross Premier Silver Benefits Certificate*[1] (the certificate).

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1 BCBSM form no. 603F, effective 08/2015.

On August 20, 2015, the Petitioner obtained a SUPREP Bowel Prep Kit from a network pharmacy. The kit, a laxative used to cleanse the colon, was purchased as a preparation for a colonoscopy scheduled for August 25, 2015. BCBSM's approved amount for the kit was $81.09 and it applied that amount to the Petitioner's network deductible.

The Petitioner, believing there should be no cost sharing for the kit because it was part of a preventive care service, appealed the decision through BCBSM's internal grievance process. At the conclusion of that process, BCBSM issued a final adverse determination dated September 24, 2015, affirming its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

III. Issue

Is BCBSM required to cover the Petitioner's bowel prep kit without cost-sharing?

IV. Analysis

Petitioner's Argument

In a letter of appeal to BCBSM dated September 4, 2015, the Petitioner also wrote:

> I am writing to appeal the $71.09 [*sic*] that I paid on August 20th, for the Prep that I had to take for my colonoscopy on August 25th. The Colonoscopy is fully covered as preventative care as per The Affordable Care Act and per my [BCBSM] policy. The Colonoscopy prep is a part of the Colonoscopy and not a stand-alone medicine and as such should be paid 100% and not a part of the deductible.

BCBSM's Argument

In its final adverse determination, BCBSM told the Petitioner:

> According to our records, you purchased a bowel prep kit on August 20, 2015. The total charge submitted for the prescription drug purchase was $95.65. Our approved amount for the prescription drug is $81.09. Because your integrated in-network deductible has not been met, we appropriately applied the approved amount towards your in-network deductible requirement. As a result, the in-network deductible of $81.09 remains your liability.
>
> You are covered under the *Blue Cross Premier Silver Benefits Certificate (Certificate)*. According to Page 12 of your *Certificate:*
>
> **Deductible Requirements**
>
> This plan has an integrated medical and prescription drug deductible. "Integrated" here means that all the payments you make for covered medical and prescription drug expenses are combined to meet this deductible.

In-Network Deductible

You are required to pay the following deductible each calendar year for covered services provided by in-network providers:

- $1,400 for one member

. . . [C]overed medical and prescription drug expenses are combined to meet the in-network deductible and your in-network deductible has not been met on the date the claim was processed. Accordingly, the approved amount of $81.09 for the purchase of the bowel prep kit was appropriately applied to your in-network contractual deductible requirement.

In your appeal letter, you state that the bowel prep kit purchased on August 20, 2015 should be covered as part of the preventive colonoscopy you received on August 25, 2015. Also, that according to the Affordable Care Act and your policy, a colonoscopy is covered at 100 percent of the approved amount.

As explained on Page 90 of your *Certificate,* under section titled "Preventive Care Services":

Colonoscopy

Hospital and physician benefits for colonoscopy services are payable at 100 percent of the BCBSM approved amount.

> We pay for one routine screening colonoscopy once per member per calendar year, when performed by an in-network provider. This service is not subject to any deductible, coinsurance or copayment requirements.

As stated above, hospital and physician benefits for a preventive colonoscopy are not subject to deductible, coinsurance, and copayment requirement. However, coverage for a preventive colonoscopy does not extend to the purchase of a prescription drug at a pharmacy. As a result, I am unable to make an exception on your behalf.

Director's Review

The federal Patient Protection and Affordable Care Act requires most health plans to cover, without cost sharing, certain preventive care services recommended by the United States Preventive Services Task Force[2] (USPSTF), among them a colorectal cancer screening:

> The USPSTF recommends screening for colorectal cancer using fecal occult blood testing, sigmoidoscopy, or colonoscopy in adults beginning at age 50 years and continuing until age 75 years. The risks and benefits of these screening methods vary.

To comply with this recommendation, the certificate includes a benefit for colonoscopy. The benefit is described on pp. 89-90:

2 See 42 USC §300gg-13 and regulations at 45 CFR § 147.130.

> We pay 100 percent of our approved amount for the preventive care services listed below, along with the related reading and interpretation of your test results, only when rendered by in-network providers.
>
> Deductibles, coinsurance or copayments are not required for these services when performed by an in-network provider.
>
> * * *
>
> - Colonoscopy
>
> Hospital and physician benefits for colonoscopy services are payable at 100 percent of the BCBSM approved amount as follows:
>
> — We pay for one routine screening colonoscopy once per member per calendar year, when performed by an in-network provider. This service is not subject to any deductible, coinsurance or copayment requirements.
>
> — Subsequent medically necessary colonoscopies performed during the same calendar year by an in-network or out-of-network provider are subject to your deductible and coinsurance requirements.

It is BCBSM's position that only "hospital and physician" benefits for colonoscopy services are covered with no cost sharing, not prescription drugs. The Petitioner says that the prep kit "is a part of the Colonoscopy and not a stand-alone medicine" and therefore should be covered with no cost sharing.

The Director concludes that the SUPREP Bowel Prep Kit was an essential part of the Petitioner's colonoscopy and should be covered in this case without cost sharing. The Petitioner's gastroenterologist prescribed the kit in advance of the colonoscopy; it is only useful to prepare for a colonoscopy. BCBSM does not dispute that the kit was medically necessary nor does it assert that a comparable product was available over-the-counter (see exclusion on p. 86 of the certificate).

The certificate says that preventive care tests include "the related reading and interpretation" of the test results. Similarly, the Director concludes that in this case the colonoscopy included the related prescription prep kit ordered by the Petitioner's gastroenterologist.

V. ORDER

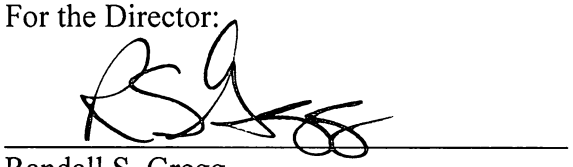
The Director reverses BCBSM's final adverse determination of September 24, 2015. BCBSM shall immediately cover the Petitioner's colonoscopy prep kit obtained on August 20, 2015, any cost-sharing, and shall, within seven days of providing coverage, furnish the Director with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding the implementation of this order to the Department of Insurance and Financial Service, Health Care Appeals Section, toll free 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 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 Director of Insurance and Financial Services, Health Care Appeals Section, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin
Director

For the Director:



Randall S. Gregg
Special Deputy Director