

**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. 150742-001**

**Blue Cross Blue Shield of Michigan,**

**Respondent.**

---

Issued and entered  
this 14<sup>th</sup> day of December 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

██████████ (Petitioner), a ██████████,<sup>1</sup> was denied coverage for an actigraphy test by his health insurer, Blue Cross Blue Shield of Michigan (BCBSM).

On November 5, 2015, ██████████, the Petitioner's parent, filed a request with the Director of Insurance and Financial Services for an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On November 13, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits through the Michigan Education Special Services Association (MESSA), a group 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 on November 18, 2015.

The case involves a medical issue so it was assigned to an independent review organization which submitted its recommendation on November 27, 2015.

**II. FACTUAL BACKGROUND**

At the time the medical service in dispute was performed, the Petitioner's health care benefits were defined in a document called *MESSA Choices / Choices II Group Insurance for School Employees* (the coverage booklet)

---

<sup>1</sup> ██████████

The Petitioner has a sleep disorder and his physician prescribed an actigraphy test, a means of evaluating sleep patterns and rest and activity cycles. The test (CPT code 95803) was performed on February 10, 2014. The charge was \$945.05.

BCBSM denied coverage, saying the test was experimental or investigational for the Petitioner's condition and therefore not a covered benefit. The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process BCBSM issued a final adverse determination dated September 9, 2015, affirming its denial.

The Petitioner now seeks a review of that final adverse determination from the Director.

### III. ISSUE

Was the actigraphy test experimental or investigational?

### IV. ANALYSIS

#### Petitioner's Argument

The Petitioner's parents explained their position in the external review request:

An actigraph was used to help diagnose our son . . . with a circadian rhythm disorder. . . . The use of actigraphy has been determined to be experimental by MESSA / Blue Cross Blue Shield under our policy.

Our research, almost two year later, states that an actigraph would indeed be considered experimental and not as reliable as the "gold standard" assessment, an electroencephalogram, as a stand-alone diagnostic tool. However, [the Petitioner] has undergone 5 sleep studies since the age of [redacted]. All of these have supported that he has a sleep disorder. [His physician] decided to have [him] wear the actigraph to further investigate [his] sleep/wake cycle, something a sleep study cannot monitor over a prolonged period of time to establish his sleep patterns. The doctor also had [us] record a sleep log in conjunction with the actigraph study to further validate the data collected.

[The Petitioner] also has an expressive language disorder, which makes it difficult for him to tell people how he feels. This disorder made it necessary for [his physician] to further investigate [his] condition by using an actigraph to collect data regarding [his] sleep/wake activity.

The data gathered from the actigraph study determined that [redacted] had a circadian rhythm disorder, preventing his body from going to sleep at a normal time for a child of his age. [His physician] rearranged the timing of some of [his] medication to help with this and also prescribed the use of a light box for him to use daily as a therapy tool to help [his] body regulate his sleep pattern.

BCBSM's Argument

In its final adverse determination, BCBSM told the Petitioner's parents:

. . . The BCBSM / BCN Joint Uniform Medical Policy Committee (JUMP) has determined that procedure code 95803 (Actigraphy testing, rec/analysis/interpretation/report) is considered investigational/experimental.

\* \* \*

A board-certified D.O. in Internal Medicine reviewed the submitted documentation and determined:

You are appealing the denial of payment for your [REDACTED] Actigraphy testing performed 2/10/2014. According to the Blue Cross Blue Shield of Michigan Medical Policy "Actigraphy" this testing for the diagnosis of sleep disorders and other indications is experimental / investigational. There is insufficient scientific evidence in the current medical literature to support its efficacy and use in clinical practice. Therefore, we are unable to approve.

The Blue Cross Blue Shield of Michigan Medical Policy titled, *Actigraphy*, also explains:

Actigraphy for the diagnosis of sleep disorders and other indications is experimental / investigational. There is insufficient scientific evidence in the current medical literature to support its efficacy and use in clinical practice.

As procedure code 95803 is considered experimental / investigational, it is not a benefit of your plan. Therefore our denial of payment for services rendered on February 10, 2014, must be maintained.

Director's Review

The coverage booklet (p. 54) has this provision regarding experimental or investigational services:

The following exclusions and limitations apply to the MESSA Choices / Choices II program. . . .

- Experimental treatment (including experimental drugs or devices) or services related to experimental treatment except as approved by the BCBSM or MESSA medical director. In addition, we do not pay for administrative costs related to experimental treatment or for research management.

The coverage booklet (p. 71) defines "experimental or investigational treatment" as

treatment that has not been scientifically proven to be as safe and effective for treatment of the patient's condition as conventional treatment. Sometimes it is referred to as "experimental services."

The question of whether the actigraphy test was experimental or investigational in the treatment of the Petitioner's condition was presented to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO physician reviewer is board certified in neurology and sleep medicine, has been active practice for more than 10 years, and is familiar with the medical management of patients with the Petitioner's condition. The IRO report included the following analysis and recommendation:

**Recommended Decision**

The MAXIMUS physician consultant determined that the actigraphy testing performed on 2/10/14 was experimental / investigational for diagnosis and treatment of the member's condition.

**Rationale:**

\* \* \*

The MAXIMUS physician consultant indicated that the Health Plan's policy is based on current practice parameters published by the American Academy of Sleep Medicine on the use of actigraphy. These practice parameters are presented in recommendations at three levels: standard, guideline and option. Standard is defined as generally implies the use of Level 1 evidence, which directly addresses the clinical issue, or overwhelming Level 2 evidence." Guideline implies "the use of Level 2 evidence or a consensus of Level 3 evidence" and option implies "either inconclusive or conflicting evidence or conflicting expert opinion." The physician consultant indicated that these practice parameters only indicate actigraphy as a "standard" as a method to estimate total sleep time in patients with obstructive sleep apnea syndrome when polysomnography is not available and that the use of actigraphy for the evaluation of circadian rhythm sleep disorder was labeled as a "guideline".

The American Academy of Sleep Medicine's practice parameters on the evaluation of circadian rhythm sleep disorders indicated that the use of actigraphy as an option to guideline and also found there to be a good degree of agreement between sleep diaries and actigraphy records. The consultant explained that the Health Plan based its medical policy on the American Academy of Sleep Medicine's practice parameters and publications, and in doing so reflect the current identified standards of practice. The physician consultant noted that actigraphy has been identified as being safe. However, the consultant indicated that the clinical utility of the procedure remains questionable, as reflected by current practice guidelines. The consultant also indicated that it has not been demonstrated that the use of actigraphy is more cost effective than completion of sleep logs (sleep diary) and the clinical utility of actigraphy over sleep diary remains to be shown.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that the actigraphy testing performed on 2/10/14 was experimental / investigational for diagnosis and treatment of the member's condition.

[Citations omitted]

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the recommendation is afforded deference by the Director. In a decision to uphold or reverse an adverse determination, the Director must cite "the principal reason or reasons why the [Director] did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO's recommendation should be rejected in this case, finds that the actigraphy test was experimental or investigational for treatment of the Petitioner's condition and therefore is not a covered benefit under the terms of the coverage booklet.

#### V. ORDER

The Director upholds BCBSM's final adverse determination of September 9, 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