

**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. 151956-001**

**Blue Cross Blue Shield of Michigan**  
**Respondent**

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Issued and entered  
this 26<sup>th</sup> day of February 2016  
by **Randall S. Gregg**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On January 29, 2016, ██████████ (Petitioner) filed a request for external review with the Director of Insurance and Financial Services under the Patient's Right to Independent Review Act, MCL 550.1901, *et seq.* The request for review involves a denial of coverage issued by Blue Cross Blue Shield of Michigan (BCBSM). The Director accepted the request on February 5, 2016. The Director notified BCBSM of the external review and requested the information used in making its adverse determination. The Director received BCBSM's response on February 15, 2016.

The Petitioner's health care benefits are defined in BCBSM's *Simply Blue HSA Group Benefits Certificate With Prescription Drugs SG*.

The issue in this case can be decided by applying the terms of the certificate. 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**

During the Petitioner's pregnancy, ultrasounds detected abnormalities that indicated the probability of VACTERL syndrome, an association of abnormalities including vertebral defects, anal anomalies, cardiac anomalies, tracheoesophageal fistula, renal anomalies and limb anomalies. The tests were performed initially by her doctor and, later, at the University of

Michigan [REDACTED]. The Petitioner and her husband decided to terminate the pregnancy. The procedure was performed on July 16, 2015 at the University of Michigan. The cost of the procedure was \$11,439.55. A post-operative survey confirmed the VACTERL syndrome diagnosis.

BCBSM denied coverage. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM issued its final adverse determination on December 2, 2015, affirming its denial. The Petitioner now seeks the Director's review of BCBSM's decision.

### III. ISSUE

Did BCBSM correctly deny coverage for the Petitioner's abortion?

### IV. ANALYSIS

#### Respondent's Argument

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

A board-certified M.D. in Obstetrics and Gynecology reviewed your medical records and determined:

Available documentation reviewed. Patient is a 34-year-old female...who underwent elective termination of pregnancy at 21 weeks due to a concern for VACTERL syndrome. This was found incidentally on a second trimester screening U/S exam. Medical records indicate that the patient was aware that the procedure would not be covered by her insurance company and wished to have the surgical procedure at the facility in question. Based on the information provided, this termination was not medically necessary and payment should be denied.

Because this service is not considered medically necessary, we cannot approve payment for this and the related services....

#### Petitioner's Argument

In her request for an external review, the Petitioner argued BCBSM should cover her pregnancy termination procedures, stating:

It is my opinion that this procedure was not elective. Per the terms of my contract, an abortion performed to preserve the life or health of the child after a live birth, is not considered to be elective. Considering the grave prognosis associated with VACTERL association (which includes fetal and neonate mortality).

I would like to address a comment that was mentioned in the appeal response, regarding the fact the "patient was aware that the procedure would not be covered and wished to have the procedure." While I was aware that elective abortions are

not covered, I did not believe that mine would be considered elective, due to the presences of life threatening genetic anomalies. Furthermore, that knowledge (or lack of) should have no bearing on the decision whether or not to pay this claim. In determining medical necessity, knowledge of benefits is irrelevant.

### Director's Review

The Petitioner's certificate of coverage includes provisions regarding coverage for abortions. These provisions are based on a Michigan statute, the Abortion Insurance Opt-Out Act, Public Act No. 182 of 2013, MCL 550.541, *et seq.* The certificate of coverage provides:

#### **Section 5, General Services We Do Not Pay For**

Elective Abortions: Services, devices, drugs or other substances provided by any provider that are prescribed to terminate a woman's pregnancy for a purpose other than to: increase the probability of a live birth; preserve the life or health of the child after a live birth; or remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman. Any service, device, drug or other substance related to an elective abortion is also excluded.

NOTE: Elective abortions do not include: a prescription drug or device intended as a contraceptive; services, devices, drugs or other substances provided by a physician to terminate a woman's pregnancy because her physical condition, in the physician's reasonable medical judgment, requires that her pregnancy be terminated to avert her death; and treatment of a woman experiencing a miscarriage or who has been diagnosed with an ectopic pregnancy.

The certificate of coverage defines an elective abortion as:

The intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a fetus that has died as a result of natural causes, accidental trauma, or a criminal assault on the pregnant woman.

No argument has been presented that the abortion was performed for any of the permissible circumstances listed in the definition of elective abortion. The certificate of coverage does not offer coverage for abortions when the pregnancy is terminated due to a diagnosis that a child will be born with birth defects.

BCBSM, in its final adverse determination, asserts that the requested procedure is not medically necessary. In contrast, the Petitioner, in her request for external review, implies that the procedure is medically necessary. In this case, medical necessity does not determine whether the procedure is a covered benefit. That issue is controlled by the certificate of coverage, which is based in pertinent part on the Abortion Insurance Opt-Out Act.

BCBSM's denial of coverage for an elective pregnancy termination is consistent with the terms of the Petitioner's certificate of coverage and Michigan law.

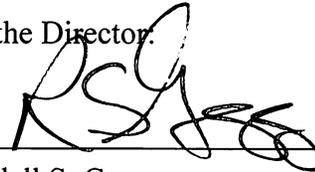
**V. ORDER**

The Director upholds BCBSM's final adverse determination of December 2, 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 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 Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin  
Director

For the Director:

A handwritten signature in black ink, appearing to read 'RS Gregg', is written over a horizontal line.

Randall S. Gregg  
Special Deputy Director