

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. 153260-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 25th day of May 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On April 15, 2016, ██████████ (Petitioner) 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 550.1951 *et seq.* On April 22, 2016, 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 Blue Cross Blue Shield of Michigan (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 responded on April 28, 2016.

Initially it appeared that the issue in this case could be resolved by a contractual analysis. However, upon further review the Director determined that an analysis and recommendation from an independent review organization (IRO) was necessary and the case was assigned on May 6, 2016.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the *Blue Cross Premier Bronze Benefits Certificate* (the certificate).

The Petitioner is diabetic and uses an insulin pump to manage his condition. On August 17, 2015, he received 90 “units” of insulin. BCBSM covered 30 units but denied coverage for the remaining 60 on the basis that Petitioner exceeded the maximum units allowed.

The Petitioner’s wife, acting as his authorized representative, appealed BCBSM’s denial through its internal grievance process. BCBSM held a managerial-level conference and then issued a final adverse determination dated March 24, 2016, upholding its decision. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny coverage for the Petitioner’s insulin?

IV. ANALYSIS

Petitioner’s Argument

The Petitioner wrote on the external review request form:

I have needed one insulin pod for Type II diabetes as of 9/24/2008. There has been a change in how the BC/BS processing / allowances as now they allow only 1/3 #quantity needed. My plan costs have risen, nothing else has changed . . . this need has not changed.

BCBSM’s Argument

In the final adverse determination, addressed to the Petitioner’s wife, BCBSM’s representative wrote:

. . . I reviewed [the Petitioner’s] claim, your appeal and your health care plan benefits for [BCBSM].

* * *

[The Petitioner] is covered under the *Blue Cross Bronze Benefits Certificate (Certificate)*. According to the *Benefit Package Report (BPR)*, an online tool that houses procedure specific benefit information for his group, [the Petitioner’s] health care plan indicates a quantity limitation for procedure code A9274 (Ext amb insulin delivery system). According to the *BPR*, [he] may receive less or equal to thirty (30) units per 85 day period.

On August 17, 2015, [the Petitioner] received ninety (90) units of insulin. Our records show that BCSM paid for thirty (30) units. However, because [his] health care plan indicates a quantity limitation of thirty (30) units per 85 day period, payment for the remaining sixty (60) units is unavailable.

Director's Review

The certificate (p. 68) describes in part the benefits for diabetes management:

We pay for:

Selected services and medical supplies to treat and control diabetes when determined to be medically necessary and prescribed by an M.D. or D.O. . . .

Diabetes services and medical supplies include:

* * *

- Insulin

That provision derives from section 3406p(4) of the Insurance Code, MCL 500.3406p(4):

(4) An expense-incurred hospital, medical, or surgical policy or certificate delivered or issued for delivery in this state and a health maintenance organization contract that provides outpatient pharmaceutical coverage directly or by rider shall include the following coverage for the treatment of diabetes, if determined to be medically necessary:

- (a) Insulin, if prescribed by an allopathic or osteopathic physician.

Both the certificate and the Insurance Code require BCBSM to cover “medically necessary” insulin. BCBSM cannot arbitrarily limit the amount insulin to be covered; it must take into account the actual medical needs of a diabetic member.

To help the Director answer the question of whether it was medically necessary for the Petitioner to have the equivalent of one “pod” of insulin per day (instead of being limited to 30 pods for 85 days), the issue 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 internal medicine and endocrinology, has been in practice for more than 12 years, and is familiar with the medical management of patients with the Petitioner's condition. The IRO report included the following analysis and recommendation:

This case concerns a 62 year-old male who has requested authorization and coverage for 90 units (pods) of insulin (A9274). The Health Plan denied this request on the basis that there is a quantity limitation of 30 units per 85 day period.

A review of the record indicates that the member has a history of type II diabetes mellitus. On 2/9/16, the member's treating physician wrote a letter in support of this request. This letter explained that the member requires high doses of insulin

in his insulin pump therapy. It also explained that the member uses approximately 200 units (a pod) a day and will continue to require this live saving medicine.

* * *

Recommended Decision:

The MAXIMUS physician consultant determined that 90 pods of insulin per 90 day period are medically necessary for treatment of the member's condition.

Rationale:

The MAXIMUS independent physician consultant, who is familiar with the medical management of patients with the member's condition, has examined the medical record and the arguments presented by the parties.

* * *

The MAXIMUS physician consultant explained that the member needs one pod of insulin per day since he uses 200 units of insulin per day and each pod holds 200 units of insulin. The physician consultant noted that patients are usually advised to change pods every 3 days to minimize infection. However, the consultant indicated that this case differs in that one cannot re-use a pod and therefore, a new pod is needed to provide enough insulin to be delivered each day to the member.

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 it is medically necessary at this time for the Petitioner to use one pod of insulin per day.

V. ORDER

The Director reverses BCBSM's final adverse determination of March 24, 2016.

BCBSM shall immediately authorize and cover medically necessary insulin for the Petitioner, currently an amount equal to one pod per day. Within seven days of providing coverage BCBSM shall furnish the Director with information showing it has complied with 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, at this toll free telephone number: (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 sixty 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:

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

Randall S. Gregg
Special Deputy Director