

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. 154373-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 19th day of July 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

████████████████████ (Petitioner) was denied coverage for a nonprescription drug by his health insurer, Blue Cross Blue Shield of Michigan (BCBSM).

On June 27, 2016, ████████████████████, the Petitioner's mother and legal guardian, filed a request with the Director of Insurance and Financial Services for an external review of BCBSM's denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted, the Director accepted the request on July 7, 2016.

The Petitioner receives health care benefits, including prescription drugs, through an individual plan 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 responded on July 8, 2016.

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 opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in the *Blue Cross Premier Bronze Benefits Certificate* (the certificate). He also has secondary coverage through Medicaid.

The Petitioner has a complex medical history that includes respiratory problems and allergies. In March 2016 his physician asked BCBSM to make an exception and coverage Claritin RediTabs to treat his condition. BCBSM denied the request because Claritin RediTabs is an over-the-counter (OTC) medication.

The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of that process, BCBSM affirmed its decision in a final adverse determination dated June 1, 2016. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny coverage for Claritin Redi-Tabs?

IV. ANALYSIS

Petitioner's Argument

In a June 22, 2016, letter submitted with the external review request, the Petitioner's mother explained:

[The Petitioner] is our almost 30 year old "child." We have lovingly cared for him all these years at home. We have sincerely tried our best to provide him with the best. He is severely multiply impaired, but such a neat person.

[He] started taking Claritin RediTabs many years ago when it was a prescription medication. When it went generic, we tried them ([he] did). But none of the generic version worked for him. He's very sensitive to new things, some were too dense to melt, he spit the[m] out, some tasted bad, etc., etc. We were always able to get a PA from medicaid through his doctor for what would work for him, thus keeping him healthy. [He] is sick a lot with repository [sic] illnesses.

[The Petitioner] has also, always been on our family BCBS policy, but it was a policy with no prescription coverage. But now with the new healthcare law, he must have his own policy, and it must have

prescription coverage. We were able to get [his] prescriptions through medicaid.

In March of this year, BCBS said they would no longer cover Claritin RediTabs -- it is now over the counter, but medicaid would still cover it with a PA from [the Petitioner's] doctor. Since [Petitioner] has both BCBS and medicaid, now BCBS must approve a medication first. Since BCBS will not budge, medicaid cannot cover it either.

The computer code for Claritin RediTabs comes back saying: NDC discontinued. Claritin RediTabs are not discontinued. Bayer has assured me of that. Medicaid needs it to say: NOC not covered.

We have tried EVERYTHING!! Hours of phone calls, paperwork, appeals, emotion. We can't get BCBS to make an exception, or change the wordage.

If BCBS would change their wording to not covered instead of discontinued or if they would make an exception for [Petitioner], we could get this medication covered!

In an April 18, 2016, letter submitted for BCBSM's internal review, the Petitioner's physician wrote:

This letter is in regards to a recent denial we received to cover Claritin RediTabs (DAW) one tablet twice daily. It is my understanding that this authorization was denied because the medication is available over the counter and is excluded on [the Petitioner's] plan. It is my hope after reading this letter, this medication will be approved as it is an imperative part of his prescription regimen.

[Petitioner] has been a patient of mine since 1997 and, as you may know, has a very complex medical case. His many different diagnoses include: severe latex allergy, allergic asthma, perennial allergic rhinitis, chronic sinusitis, allergic conjunctivitis, chronic bronchitis, GERD and a history of pneumonia. It should also be noted [he] is also severely mentally handicapped and is limited to certain forms of medications, such as liquid or dissolvable tablets. It has taken many years and numerous trials and failures of medications in order to find the correct dosage and combination that keeps him healthy.

[The Petitioner] was previously on Claritin reditabs once daily and his frequency was increased to twice daily on 10/2/12 due to the medication not providing relief all day. He has previously tried the generic brand Loratadine reditabs which did not dissolve as quickly, therefore, the patient spit the disintegrative tablet out before it was able to completely

dissolve.

I hope you will agree that approving Claritin Reditabs is in [his] best interest so he may stay healthy and avoid any unnecessary sickness. Also, it would be very beneficial to the patient's family for this medication to be approved so they do not have to incur the added expense of purchasing OTC medication ...

BCBSM's Argument

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

... After review, the denial of prior authorization for the prescription drug Claritin DAW (Reditabs) is maintained. Your prescription drug plan does not cover over-the-counter medications. Claritin Daw (Reditabs) is an over-the-counter medication and is therefore excluded from coverage.

* * *

A Clinical Pharmacist, RPh, reviewed your appeal and your health care plan benefits for Blue Cross Blue Shield of Michigan (BCBSM) and determined the following:

The requested medication, Claritin DAW (Reditabs) is excluded from prescription drug coverage under your Custom Select drug plan. Your prescription drug plan does not cover over-the-counter (OTC) medications.

While we understand that you feel this prior authorization request maybe based on your medical need, BCBSM must administer your prescription drug coverage based on the benefits that align with the provisions of your health care plan.

Director's Review

The certificate, in "Section 3: What BCBSM Pays For," has these exclusion under **Prescription Drugs Not Covered** (pp. 89, 90):

- We do not pay for:

* * *

- Over the counter drugs unless coverage is required under the Patient Protection and Affordable Care Act or not considered a covered service
- Prescription drugs with comparable products available over-the-counter, but not limited to, cough/cold products

Claritin RediTabs is an over-the-counter drug. Consequently, it is excluded under the terms of the certificate. While Petitioner's mother and his physician presented compelling reasons for BCBSM to consider granting an exception, such an exception is not required by law so the Director has no authority to amend the terms of coverage. Accordingly, the Director finds that BCBSM's denial of coverage for over-the-counter Claritin RediTabs is consistent with the terms of certificate.

V. ORDER

The Director upholds BCBSM's June 1, 2016, 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 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