

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. 150046-001

CIGNA Life and Health Insurance Company,

Respondent.

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Issued and entered  
this 6<sup>th</sup> day of November 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

██████████ (the Petitioner), a minor, was denied coverage for speech therapy by his health plan, CIGNA Health and Life Insurance Company (CIGNA).

On September 24, 2015, ██████████, the Petitioner's father, 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.* After a preliminary review of the material submitted, the Director accepted the request on October 1, 2015.

The Petitioner receives health care benefits as a dependent through a group plan underwritten by CIGNA. The Director notified CIGNA of the external review request and asked for the information it used to make its final adverse determination. CIGNA provided its response on October 9, 2015.

Initially, the case appeared to involve only contractual issues so the Director did not immediately assign it to an independent review organization (IRO). Upon further review it was determined the case would benefit from review by a medical professional. Therefore, on October 14, 2015, the case was assigned to an IRO which provided its analysis and recommendation to the Director on October 29, 2015.

**II. FACTUAL BACKGROUND**

The Petitioner's health care benefits are defined in CIGNA's *Open Access Plus Medical Benefits* certificate of coverage (the certificate).

The Petitioner has Down syndrome and requires speech therapy. He had 18 speech therapy visits from November 2014 to May 2015. CIGNA denied coverage for this therapy, saying it was not a benefit under the terms of the certificate.

The Petitioner appealed the denial through CIGNA's internal grievance process. At the conclusion of that process, CIGNA affirmed its decision in a final adverse determination dated August 20, 2015. The Petitioner now seeks a review of that adverse determination from the Director.

### III. ISSUE

Did CIGNA correctly deny coverage for the Petitioner's speech therapy?

### IV. ANALYSIS

#### BCBSM's Argument

In its final adverse determination to the Petitioner's father, CIGNA's, wrote:

#### Appeal Decision

After reviewing the appeal, the original decision to deny the speech therapy for [the Petitioner] provided on dates of service 11/25/14, [through] 05/26/15, is upheld. All the original information in your file, the information submitted with this request and the terms of your benefit plan was reviewed.

\* \* \*

This decision was based on the following:

- According to your Sappi Fine Paper North America certificate, it states:
  - Under the section titled, "Mental Health and Substance Abuse Services":
    - The following are specifically excluded from Mental Health and Substance Abuse Services:
      - any court ordered treatment or therapy, or any treatment or therapy ordered as a condition of parole, probation or custody or visitation evaluations unless Medically Necessary and otherwise covered under this policy or agreement.
      - treatment of disorders which have been diagnosed as organic mental disorders associated with permanent dysfunction of the brain.
      - developmental disorders, including but not limited to, developmental reading disorders, developmental arithmetic disorders, developmental language disorders or developmental articulation disorders.
      - counseling for activities of an educational nature.
      - counseling for borderline intellectual functioning.
      - counseling for occupational problems.

- counseling related to consciousness raising.
  - vocational or religious counseling.
  - I.Q. testing.
  - custodial care, including but not limited to geriatric day care.
  - psychological testing on children requested by or for a school system.
  - occupational/recreational therapy programs even if combined with supportive therapy for age-related cognitive decline.
- Under the section titled, Exclusions, Expenses Not Covered and General Limitations:
    - Exclusions and Expenses Not Covered:
      - Additional coverage limitations determined by plan or provider type are shown in the Schedule. Payment for the following is specifically excluded from this plan.
        - non medical counseling or ancillary services, including but not limited to Custodial Services, education, training, vocational rehabilitation , behavioral training , biofeedback, neurofeedback, hypnosis, sleep therapy, employment counseling, back school, return to work services, work hardening programs, driving safety, and services, training, educational therapy or other nonmedical ancillary services for learning disabilities, developmental delays, or mental retardation.

### Petitioner's Argument

In the request for external review, the Petitioner's parents wrote:

[Our son] has Down Syndrome and requires speech therapy, occupational therapy, and physical therapy; our plan has all 3 listed side by side as covered under rehabilitation. They have covered physical therapy with no issue for several years. We started speech in the fall. We feel we did our due diligence and got prior approval through Essentia before starting speech therapy. Yet CIGNA has denied coverage and given us inconsistent responses as why it was denied. Despite several months of asking for it, CIGNA refused to give us a written statement referencing our plan until after our final internal appeal was exhausted. . . .

### Director's Review

The certificate covers speech therapy under "Outpatient Short-Term Rehabilitative Therapy and Chiropractic Services" (p. 18). All therapies, including speech therapy, have a combined visit limit of 60 days per calendar year. After the deductible has been satisfied, the therapy is paid at 90% from in-

network providers and 70% from out-of-network providers. Speech therapy must be medically necessary to be covered (certificate, p. 41).

CIGNA's final adverse determination was not specific. CIGNA apparently based its denial of coverage on language in the certificate that excludes coverage for certain services, including "services, training, educational therapy or other nonmedical ancillary services for learning disabilities, developmental delays, or mental retardation." Those exclusions do not specifically mention speech therapy or Down syndrome.

To help resolve the issues in this case, the Director assigned it to an independent review organization (IRO) for analysis and a recommendation 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 pediatrics, is published in the peer reviewed literature, and is in active practice.

The IRO report established that speech therapy is medical in nature for the treatment of Down syndrome:

The use of speech therapy in Down syndrome is widely established as standard of care. Per the National Down Syndrome Society (NDSS), "Children with Down syndrome have strengths and challenges in development of communication skills, including receptive (understanding) language and expressive (speaking and composing sentences) language skills and reading. It takes a team to help children and adolescents progress well in speech and language; that team typically includes speech-language pathologists, physicians, classroom teachers, special educators and families. Speech-language pathologists have information and expertise to help address the speech and language problems faced by many children with Down syndrome." There are significant ear, nose and throat (ENT) and speech disorders in this group of patients, typically requiring the services of a speech therapist. Per Bull and the American Academy of Pediatrics (AAP), clinical practice guidelines dictate a need for "early intervention, including physical therapy, occupational therapy and speech therapy" for these children to help them with the communication needs.

The IRO report then went on to establish the medical necessity for the speech therapy:

This enrollee has a history of Down syndrome and significant speech delays, partly related to his mental capabilities with Down syndrome and partly related to his hypotonia/oral motor dysfunction. This enrollee has significant articulation concerns, receptive language and expressive language problems, and he has been making progress with his speech therapy to date. The enrollee is able to communicate some with sign language, but he needs to be able to communicate verbally as well. There is no indication that this enrollee is not expected to continue to improve with this therapy, and the speech therapist has provided specific long and short-term goals for the enrollee. The continued treatment is consistent with the standards of care in the clinical care field.

Therefore based on the clinical information provided for review, the current peer-reviewed literature and standards of care in the field, the requested speech therapy services are medically necessary at this time.

**Recommendation:**

It is the recommendation of this reviewer that the denial issued by Cigna Health and Life Insurance Company for the speech therapy sessions be overturned.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the IRO's 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. The Director can discern no reason why that analysis should be rejected in the present case. Therefore, the Director adopts the IRO recommendation and finds that speech therapy is medically necessary to treat the Petitioner and is a covered benefit.

**V. ORDER**

The Director reverses BCBSM's August 20, 2015, final adverse determination.

BCBSM shall immediately approve coverage for the Petitioner's speech therapy and shall, within seven days of providing coverage, furnish the Director with proof it implemented 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 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 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:



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Randall S. Gregg  
Special Deputy Director