

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. 151151-001-SF

Michigan State University, Plan Sponsor,

and

CVS Caremark, Plan Administrator,

Respondents.

Issued and entered
this 29th day of December 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for a prescription drug by the administrator of his drug benefit plan (the plan).

On December 4, 2015, he filed a request with the Director of Insurance and Financial Services for an external review of that denial under Public Act No. 495 of 2006 (Act 495), MCL 550.1951 et seq. The Petitioner's prescription drug plan is sponsored by Michigan State University and is a self-funded governmental health plan subject to Act 495. CVS Caremark (CVS) administers the plan and handles appeals.

The Director immediately notified CVS of the external review request and asked for the information the plan used to make its final adverse determination. CVS responded on December 16, 2015, and the Director accepted the external review request on that date.

Section 2(2) of Act 495, MCL 550.1952(2), authorizes the Director to conduct this external review as though the Petitioner were a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 et seq.

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 drug plan is explained in a booklet called "Your Prescription Benefit." His coverage under the plan was effective on August 16, 2015.

The Petitioner suffers from allergies and under a prior drug plan was treated with levocetirizine (brand name Xyzal), an antihistamine used to treat allergy symptoms. However, Xyzal is not on the plan's drug formulary. The Petitioner's physician says he has tried other drugs but they failed to control his symptoms. When the physician asked the plan to cover Xyzal so the Petitioner could resume using it, CVS denied the request, saying that the drug is not covered under the terms of the plan.

The Petitioner appealed the denial through the plan's internal grievance process. At the conclusion of that process, CVS issued a final adverse determination dated October 9, 2015, affirming its denial. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Is CVS required to cover the prescription drug Xyzal?

IV. ANALYSIS

Petitioner's Argument

In his request for an external review, the Petitioner explained why he is seeking coverage for Xyzal, he wrote:

My prescription drug insurer, CVC Caremark, is denying coverage of a medication, Levocetirizine (XYZAL), which I have been taking for several years. My physician . . . has appealed this decision to CVS Caremark, and has indicated to me and to CVS Caremark that I should not stop using this medication. Instances in the past in which I have decreased or ceased the use of this medication have been followed by severe medical issues, including permanent hearing loss in my left ear. [My physician] has indicated to me that in his "medical judgement" we shall not risk experimenting with other medications. CVS Caremark claims that this does not constitute "medical judgement." I expect CVS Caremark to compensate me for the difference in my out-of-pocket costs for this medication from October 13, 2015 (\$147.99) and November 11, 2015 (\$147.99). . . .

In a letter dated October 7, 2015, the Petitioner's physician explained why Xyzal is medically necessary to treat his condition:

[The Petitioner] is a patient of our practice who has a history of systemic reactions in the form of urticaria, itching, and swelling of the face off and on, as well as some difficulty breathing. We have also treated him for asthma and allergic rhinitis.

[He] has been on brand name Xyzal 5 mg twice daily, dated as far back as March 4, 2008. Prior to this (somewhere between March 4, 2008 and May 6, 2008) he had tried and failed Allegra 180 mg, Zyrtec 10 mg, and Hydroxyzine 25 mg twice daily. None of these medications were enough to control his symptoms. [He] does carry an Epi-Pen for use in the event of a systemic reaction, and has been seen in the emergency room for his condition.

Xyzal has been the only medication to provide effective control of [his] symptoms, and discontinuing this medication would place him at risk for a serious illness, which may even be life threatening. In the past [the Petitioner] has tried stopping the Xyzal, and his symptoms immediately returned. Given these factors, Xyzal (brand name only) should be considered a medical necessity for this patient.

...

As [he] will need a new prescription of Xyzal very shortly, I urge you to authorize this potentially lifesaving medication for him as soon as possible. . . .

Respondents' Argument

In its final adverse determination, CVS told the Petitioner:

CVS Caremark has reviewed your benefit reconsideration request for XYZAL. Your request for medication was denied because it did not meet the established criteria defined by your prescription benefit plan. This is the final determination of your claim. The reason for denial was:

Your appeal for coverage of XYZAL is denied. Your pharmacy benefit plan does not cover XYZAL.

Director's Review

Xyzal (levocetirizine) is not on the plan's formulary (the Michigan State University Custom Drug List) in either brand name or generic form. The formulary notes that a specific drug plan might not cover all categories of drugs.

The Insurance Code requires insurance companies and health maintenance organizations that provide prescription drug coverage and limit that coverage to drugs included in a formulary

to “provide for exceptions from the formulary limitation when a nonformulary alternative is a medically necessary and appropriate alternative.” See MCL 500.3406o. However, the Michigan State University plan is self-funded and not subject to the Insurance Code. Therefore it has the discretion to exclude coverage for certain drugs and is not required to provide alternative drugs that are not on its formulary even if they are medically necessary.

The Director concludes that the plan correctly denied coverage for Xyzal (levocetirizine) under the terms of the Petitioner’s prescription drug coverage.

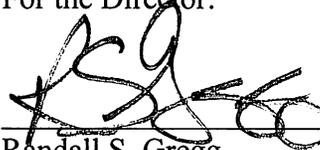
V. ORDER

The Director upholds plan’s final adverse determination of October 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:

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

Randall S. Gregg
Special Deputy Director