

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 101654-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 20th day of March 2009
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On November 26, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on December 5, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on December 15, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Nongroup Comprehensive Health Care Benefits Certificate* (the certificate). The Commissioner 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

Under the terms of the certificate, BCBSM pays 70% of the approved amount for physical therapy after the deductible has been met. The Petitioner received physical therapy from October 8 through December 12, 2007. BCBSM denied all payment for the physical therapy provided after December 6, 2007.

The Petitioner appealed BCBSM's denial of his physical therapy. BCBSM held a managerial-level conference on September 9, 2008, and issued a final adverse determination dated September 23, 2008.

III ISSUE

Did BCBSM correctly deny coverage for the Petitioner's physical therapy after December 6, 2007?

IV ANALYSIS

Petitioner's Argument

The Petitioner received post-surgery physical therapy and BCBSM paid for this care until early December 2007 when it denied further coverage. In March 2008, the Petitioner contacted BCBSM by telephone about the outstanding balance of \$854.00 owed to the provider of the physical therapy. As a result of that telephone call, BCBSM processed a further payment of \$539.00, leaving a balance of \$315.00 which the Petitioner then paid. BCBSM's reason for denying the last portion of the unpaid balance was that the benefit for physical therapy was exhausted.

The Petitioner does not accept BCBSM's rationale. He says he was sent a booklet entitled "My Blue" which is supposed to detail his covered benefit and that booklet does not show a limit for physical therapy. Therefore, the Petitioner believes that BCBSM is required to pay an additional \$584.50 for his physical therapy (a \$269.50 outstanding balance still owed the provider plus the

\$315.00 paid by the Petitioner for this care).

BCBSM's Argument

Since the Petitioner received the physical therapy as outpatient hospital care, BCBSM cites this provision in Section 2 of the certificate under "Outpatient Hospital Services That Are Payable" (page 2.18):

The services listed under "Inpatient Hospital Services That Are Payable: are also payable when provided as outpatient care (**except** for those related to inpatient room, board, hemodialysis for acute renal failure, and inhalation therapy). However, the following requirements must also be met when the service is provided on an outpatient basis:

* * *

- Physical therapy, speech and language pathology services, and occupational therapy are payable when provided for rehabilitation. These benefits are payable for 60 consecutive days of treatment per condition. The services given to treat the same condition count towards the 60-day limit regardless of who provides the service.... The 60 day period begins with the first day of treatment. * * *

BCBSM says that the certificate is clear as to the duration of the physical therapy benefit. BCBSM says there is no dispute that the Petitioner began his physical therapy on October 8, 2007, and that the 60 consecutive days ended on December 6, 2007. Therefore, physical therapy services received by the Petitioner after December 6, 2007, are simply not covered and were properly denied.

BCBSM also provided copies of pages from the "My Blue" booklet. While the booklet is only intended to be a summary of in-network benefits and not the actual contract, BCBSM notes that it also says that outpatient physical, occupational and speech therapy is covered for 60 consecutive days per condition.

Commissioner's Review

The certificate, not the "My Blue" booklet, is the contract that sets out the Petitioner's benefits. The language in the certificate is clear that outpatient physical therapy for a condition is covered for 60 consecutive days beginning with the first day of therapy. The Petitioner's first day of physical therapy was October 8, 2007. Therefore, BCBSM is only required to cover the therapy

until December 6, 2007.

The Petitioner argues that the "My Blue" booklet provided to him by BCBSM does not refer to the 60-day limit but he did not provide a copy of the booklet he was given. Nevertheless, it is the certificate, not the booklet that is the contract. The Commissioner notes that BCBSM did include a copy of a page from the "My Blue" booklet that refers to the 60 consecutive day limit for physical therapy. The booklet pages that BCBSM supplied also included this disclaimer:

This document is intended to be an easy-to-read summary.... It is not a contract. Additional limitations and exclusions may apply to covered services. A complete description of benefits is contained in the applicable Blue Cross Blue Shield of Michigan certificate and riders.

The certificate is the contract and it clearly limits physical therapy services to a period of 60 consecutive days. Therefore, the Commissioner finds that the Petitioner's physical therapy coverage period ended on December 6, 2007, and BCBSM is not required to cover therapy after that date. The record further establishes that BCBSM did correctly cover the Petitioner's therapy during the 60-day period.

V ORDER

BCBSM's final adverse determination of September 23, 2008, is upheld. BCBSM is not required to cover any additional physical therapy provided the Petitioner after December 6, 2007.

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 Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.