

**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. 102481-001-SF

v

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
this 26<sup>th</sup> day of June 2009  
by Ken Ross  
Commissioner

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On January 14, 2009, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner received the request and accepted it on January 22, 2008.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

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 February 2, 2008.

The Petitioner receives health care benefits through the XXXXX, a self-funded group. BCBSM administers the plan. Benefits are defined in health plan's "Your Benefit Guide" (the benefit guide) and amendments to the plan. 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

On September 19, 2008, the Petitioner purchased a mastectomy bra and silicone breast prosthesis from a company called XXXXX. The amount charged for these items was \$395.00. BCBSM approved \$128.30 and, after applying a 20% copayment, paid \$102.64 to the Petitioner.

The Petitioner appealed the amount paid by BCBSM's for the mastectomy bra and silicone prosthesis. BCBSM held a managerial-level conference on December 10, 2008, and issued a final adverse determination dated December 18, 2008.

## III ISSUE

Is BCBSM required to pay any additional amount for the Petitioner's mastectomy bra and silicone prosthesis?

## IV ANALYSIS

### Petitioner's Argument

The Petitioner is requesting full payment of the mastectomy bra and breast prosthesis that she purchased on September 19, 2008. Her claim was only partially paid because XXXXX was not a network provider.

The Petitioner indicates that she lives in a remote area of the Upper Peninsula where there is only one network durable medical equipment (DME) provider. She was not aware that this provider had breast prostheses so she traveled 150 miles round trip to XXXXX, which specializes in these products. She says XXXXX is willing to work with BCBSM and to accept assignment; it has contracts with other insurance companies and there are no problems with payment.

The Petitioner does not believe that it is fair that there is only one network provider to use when purchasing prostheses. She says XXXX has a much larger selection of items to choose from

than BCBSM's participating provider. She feels she should have a choice of providers when purchasing "these very personal items."

She wants BCBSM to pay the full amount charged for her mastectomy bra and breast prosthesis.

#### BCBSM's Argument

BCBSM says that prosthetic and orthotic appliances are covered by XXXXX if prescribed by a physician and supplied by a licensed orthotist or prosthetist. If medical equipment and supplies, prosthetics, and orthotics are purchased through the SUPPORT program, part of the XXXXX, there is no out-of-pocket cost. However, if a non-SUPPORT supplier is used, the Petitioner must pay 20% of BCBSM's approved amount for the item and may be responsible for any difference between the supplier's charge and the approved amount.

In the Petitioner's case, she used a non-SUPPORT supplier and therefore the out-of-network sanction was applied. The Petitioner had to pay 20% of the BCBSM's approved amount of \$128.30 or \$25.66. The Petitioner also is responsible for an additional \$266.70, the difference between the amount charged by XXXXX (\$395.00) and the approved amount (\$128.30), unless the provider chooses to waive the difference between its charge and BCBSM's approved amount.

The Petitioner says she went to a non-network supplier because it is a specialty store that has a good selection of mastectomy products and she was concerned about just shopping anywhere for such personal items. BCBSM says it is sympathetic to the Petitioner but must follow the terms of coverage – it is not responsible to pay more than its approved amount and is required to apply the 20% out-of-network sanction.

#### Commissioner's Review

The XXXXX benefit guide was amended by this provision:

Effective October 1, 2005, a PPO network for durable medical equipment (DME) and prosthetic and orthotic appliances will be integrated into the SHP PPO with the in-network reimbursement at 100% and out-of-network reimbursed at 80% of approved charges. No deductible will be required.

[Underlining added]

BCBSM sets an “approved amount” for appliances and durable medical equipment. If the Petitioner had used a provider in the SUPPORT network, that provider would have been required to accept BCBSM’s approved amount of \$128.30 as payment in full.

Since the provider the Petitioner chose was not part of the SUPPORT network, BCBSM was required to apply a 20% copayment to the approved amount. Furthermore, an out-of-network provider is not required to accept BCBSM’s approved amount as payment in full and may bill the Petitioner for the balance of any charges.

The Petitioner gave reasons why she went to XXXXX that were very understandable. However, under the terms of her coverage, only supplies and services from network providers come with no out-of-pocket expense. The Commissioner concludes that the \$102.68 BCBSM paid for the Petitioner’s mastectomy bra and silicone prosthesis is in compliance with the terms of her coverage and BCBSM is not required to pay an additional amount for this item.

**V  
ORDER**

BCBSM’s final adverse determination of December 18, 2008, is upheld. BCBSM is not required to pay any additional amount for the Petitioner’s mastectomy bra and silicone prosthesis.

This is a final decision of an administrative agency. A 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. See MCL 550.1915(1), made applicable by MCL 550.1952(2). 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.