

**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. 102500-001

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 15, 2009, 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 initial request was incomplete. After additional information was provided the Commissioner accepted the request on January 28, 2009.

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 a response from Blue Cross Blue Shield (BCBSM) on February 4, 2009.

The Petitioner is enrolled for health coverage through XXXXX Corp., an underwritten group. The issue in this external review can be decided by a contractual analysis. The contract here is BCBSM's *Community Blue Group Benefits Certificate* (the certificate). Rider CBD \$1,000-P, "Community Blue Deductible Requirement for Panel Services," also applies. 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

The Petitioner had a routine mammography on August 29, 2008. BCBSM applied the entire approved amount for this service to the Petitioner's panel deductible requirement. The Petitioner believes that this service should not be subject to any deductible.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on January 7, 2009, and issued a final adverse determination dated January 8, 2009, upholding its position.

## III ISSUE

Is BCBSM required to pay an additional amount for the Petitioner's August 29, 2008, mammogram?

## IV ANALYSIS

### Petitioner's Argument

The Petitioner states that on July 31, 2008, she called BCBSM to find out what type of coverage she had and where she should go for her mammogram. She says she spoke to Linda who informed her that the mammogram was a covered benefit and she could go anywhere for that care and it would be covered at 100%.

When the Petitioner received her explanation of benefits from BCBSM nothing had been paid for her August 29, 2008, mammogram. She says she called BCBSM and spoke to another person who told her that they were sorry she was misinformed and that BCBSM certainly had a record of her call in July.

The Petitioner filed a complaint with BCBSM but they have refused to pay for her mammogram.

BCBSM's Argument

BCBSM says that Rider CBD \$1000-P (the rider) amends the certificate to add an annual \$1,000.00 deductible requirement (for one member) for most covered services provided by panel providers. The rider says that the deductible is not required for the preventive care services shown in Section 4 of the certificate.

However, BCBSM says the charge for the mammogram was appropriately applied to the \$1,000.00 deductible because it is not preventive care. BCBSM notes that Section 4 of the certificate clearly lists the services that fall under "Preventive Care Services" and a mammography is not included:

We pay for preventive care services listed below only when rendered by panel providers, up to a combined maximum of \$250 per member, per calendar year. Copayments are not required for these services.

- Health Maintenance Examination  
\* \* \*
- Flexible Sigmoidoscopy Examination  
\* \* \*
- Gynecological Examination  
\* \* \*
- Routine Pap Smear  
\* \* \*
- Fecal Occult Blood Screening  
\* \* \*
- Well-Baby and Child Care Visits  
\* \* \*
- Immunizations  
\* \* \*
- Prostate Specific Antigen Screening  
\* \* \*
- Routine Laboratory and Radiology Services

We pay for the following services once per member, per calendar year, when performed as routine screening:

- Chemical profile
- Complete blood count or any of its components

- Urinalysis
- Chest X-ray
- EKG
- Cholesterol testing

BCBSM does not dispute that the Petitioner's mammogram was necessary. However, under the certificate, a screening mammography is not listed under preventive care services and is subject to the deductible. BCBSM contends that it has correctly covered the claims for the Petitioner's mammogram and is not required to pay more for this care.

The amounts charged by the providers and the amounts paid by BCBSM for the Petitioner's mammogram are shown in this table:

Procedure	Provider Charge	BCBSM's Approved Amount	Applied to Deductible	Petitioner's Copayment Amount	BCBSM Payment
Diagnostic X-Ray	\$247.00	\$212.33	\$212.33	\$0.00	\$0.00
77052	\$9.00	\$4.27	\$4.27	\$0.00	\$0.00
G020	\$90.00	\$45.54	\$45.54	\$0.00	\$0.00
<b>Total</b>	<b>\$346.00</b>	<b>\$262.14</b>	<b>\$262.14</b>	<b>\$0.00</b>	<b>\$0.00</b>

BCBSM says a total of \$262.14 was applied to satisfy the 2008 deductible.

The Petitioner says that she called BCBSM's customer service and a representative told her that the mammogram would be paid at 100%. BCBSM says it checked its telephone records and could not find anything to indicate that a customer representative told her that her mammogram services would be paid at 100%.

#### Commissioner's Review

There is no dispute that a screening (or routine) mammogram is a covered benefit under the certificate. However, the rider explains when the deductible is not applied:

#### **When a Deductible is Not Required**

You are not required to pay a deductible for the following:

- covered services performed in a panel physician's office
- services subject to a flat-dollar copayment requirement...
- services for the initial exam to treat a medical emergency or an accidental injury in the outpatient department of a hospital, urgent care center or physician's office
- chiropractic spinal manipulation
- prenatal and postnatal care visits
- allergy testing and therapy
- injections
- hospice care benefits
- preventive care services (specific services are listed in Section 4 of your certificate)

Routine mammography is not shown in the rider as one of the services for which the deductible is not required. Nor is it included in the list of preventive care services. Therefore, it is subject to the \$1,000.00 deductible for panel services. In this case, the \$262.14 approved amount for the Petitioner's mammogram was correctly applied to her deductible.

The Petitioner believes that BCBSM informed her that it would pay 100% of her mammography services. BCBSM says that it found no records that indicate that its customer service representatives misinformed the Petitioner. Unfortunately, that kind of a dispute cannot be resolved under the Patient's Right to Independent Review Act (PRIRA). Under PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered benefits under the terms of the applicable insurance contract and state law. Resolution of a factual dispute like the one described by the Petitioner cannot be part of a PRIRA decision because the PRIRA process lacks the hearing process necessary to make findings of fact based on evidence such as oral statements.

In conclusion, the Commissioner finds that BCBSM correctly applied the provisions of the Petitioner's certificate and applicable rider.

**V**  
**ORDER**

BCBSM's final adverse determination of January 8, 2008, is upheld. BCBSM is not required to pay an additional amount for the Petitioner's mammogram.

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.