

**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. 101945-001

v

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
This 7<sup>th</sup> day of July 2009  
by Ken Ross  
Commissioner

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On December 11, 2008, XXXXX, on behalf of her minor son 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 (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on December 18, 2008.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on January 8, 2009.

**II**  
**FACTUAL BACKGROUND**

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) as an eligible dependent through his father's employment with XXXXX., an underwritten account. His benefits are defined in the BCBSM *Community Blue Group Benefits Certificate* (the certificate).

The Petitioner, born December 10, 2000, and has been diagnosed as autistic. He received applied behavioral analysis (ABA) therapy at XXXXX Hospital from November 27, 2006, through February 23, 2007. The cost of this care was \$8,778.00 (57 visits @ \$154.00 per visit).

Payment for the Petitioner's ABA treatment was denied by BCBSM. The Petitioner appealed. After a managerial-level conference, BCBSM did not change its decision and issued a final adverse determination dated November 19, 2008.

### **III ISSUE**

Did BCBSM properly deny coverage for the Petitioner's ABA treatment?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner has been diagnosed with autism spectrum disorder and significant developmental delay, and displays, among others, self-injurious and aggressive behaviors. ABA therapy was recommended by his physician. BCBSM denied coverage for this treatment on the basis that ABA therapy is experimental or investigational treatment for the Petitioner's condition.

The Petitioner does not believe that ABA is experimental or investigational, alleging that it is the only therapeutic intervention with scientifically documented results in the treatment of autism spectrum disorders. The Petitioner asserts that numerous experts, including the New York State Department of Health, the National Academy of Sciences Committee, the Mental Health Report of the Surgeon General of the United States, and the Association of Science in Autism Treatment, recommend ABA as the most effective treatment for children with autism.

The Petitioner believes that BCBSM is required to pay for his ABA therapy.

#### **BCBSM's Argument**

BCBSM indicated that it did not cover the Petitioner's ABA services because it considered ABA to be a treatment method not sufficiently well established and therefore at the investigational stage. Experimental and investigational services are excluded from coverage (Section 6 of the

certificate).

BCBSM defines autism as a developmental disorder of brain function classified as one of the pervasive developmental disorders. These disorders can vary widely in severity and symptoms; classical autism is characterized by impaired social function, problems with verbal and nonverbal communications and imagination, and unusual or severely limited activities and interests. ABA is considered a behavioral therapy that attempts to reduce disruptive behavior and improve communication skills and social adjustment. BCBSM believes that the medical literature and clinical experience is inconclusive as to whether ABA is safe or effective treatment for any condition.

The certificate provides that a procedure is considered experimental or investigational if there is inadequate medical literature or clinical experience to support its use in a patient's condition even if it has been shown to be safe and effective in treating other conditions. BCBSM says that it appears that ABA is safe, but doubts remain as to the effectiveness of the treatment.

Therefore, BCBSM believes that the Petitioner's ABA therapy should not be a covered benefit.

#### Commissioner's Review

The question of whether the Petitioner's ABA therapy is experimental or investigational for treatment of the Petitioner's condition was presented to an IRO for analysis as required by section 11(6) of PRIRA. The IRO physician reviewer who conducted the analysis is in active practice and is licensed by the American Board of Psychiatry and Neurology and the American Board of Quality Assurance and Utilization Review Physicians; a member of the American Academy of Pediatrics, the American Academy of Neurology, and the Child Neurology Society; and is extensively published in the peer review literature. The IRO reviewer's report said in part:

It is the determination of this reviewer that ABA is not experimental / investigational for [the Petitioner's] condition and is the standard of care for the treatment of autism. It is widely used and supported by the medical literature.

\* \* \*

Based on a review of the literature, the [Petitioner] is an appropriate candidate for ABA therapy and this reviewer would not consider ABA experimental. Like all autistic children, his behavioral, communication and social skill difficulties will require a multifaceted treatment plan. Of all the psychosocial interventions, ABA has the most support in the literature to address his needs, including his very challenging behavioral problems. \* \* \*

In summary, while the literature documenting the effectiveness of ABA is limited and more studies need to be done to work out the details relating to ABA services (e.g., how many hours per week, which autistic kids are most likely to respond, etc...) there is sufficient support in the medical literature to state that ABA therapy is not experimental. [The Petitioner's] problems including his self abusive behaviors, communication and social skill deficits are typical of children who are on the autistic spectrum. His challenging behavioral problems are of significant concern as he can be a danger to himself and others. Behavioral interventions are required and of the various psychosocial interventions that can be used to address these issues, ABA has, by far, the most support in the peer reviewed medical literature. Reviewer strongly concurs with the treating physician's recommendation that ABA therapy be utilized.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case. Therefore, the Commissioner accepts the IRO reviewer's conclusion and finds that ABA therapy for the Petitioner is not experimental/investigational for treatment of the Petitioner's condition.

**V  
ORDER**

Respondent BCBSM's November 19, 2008, final adverse determination is reversed. BCBSM shall authorize and cover the Petitioner's ABA therapy provided from November 27, 2006, through February 23, 2007, subject to any applicable terms and conditions of the certificate. Coverage is to be provided within 60 days from the date of this Order with proof of compliance provided to the

Commissioner within seven days of compliance.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or 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.