

**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. 104584-001

v

Blue Cross Blue Shield of Michigan

Respondent

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**Issued and entered**  
**this 12<sup>th</sup> day of August 2009**  
**by Ken Ross**  
**Commissioner**

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On April 29, 2009, 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 May 6, 2009.

The Petitioner is enrolled for health care benefits through XXXXX. The coverage is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on May 15, 2009.

The issue in this external review can be decided by a contractual analysis. The contract here is the *Blue Choice Managed Health Care Group 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

The Petitioner received outpatient psychotherapy from XXXXX, a limited license psychologist, between August 28, 2008, and January 29, 2009 (20 visits at \$100.00 per visit). XXXXX does not participate with BCBSM, i.e., he is not in BCBSM's provider network. BCBSM denied payment for this care.

The Petitioner appealed BCBSM's denial of her psychotherapy. BCBSM held a managerial-level conference on March 26, 2009, and issued a final adverse determination dated April 14, 2009, upholding its denial.

## III ISSUE

Is BCBSM required to cover the Petitioner's psychotherapy services provided by a limited license psychologist?

## IV ANALYSIS

### Petitioner's Argument

The Petitioner indicates that BCBSM gave various answers as to whether or not care from XXXXX would be covered under her certificate. She also points out that the back of her identification card states in part: "The member's Primary Care Physician – PCP – or a Blue Choice provider must authorize services rendered by a provider outside the Blue Choice/POS network for in-network payment. Services not authorized by your PCP or a Blue Choice provider will be paid at the out-of-network level." She also notes that the certificate states, "Please keep in mind that you always have the option to see a specialist without arranging it through your PCP. However, you will pay higher out-of-pocket costs."

The Petitioner says she contacted BCBSM in August 2008 and was specifically told that she did not need preauthorization to see XXXXX. The Petitioner also says that XXXXX's office

manager contacted BCBSM in August 2008 and was told that services from a limited license psychologist were covered under her certificate.

Based on this information the Petitioner believes that BCBSM must pay for her mental health therapy at the out-of-network rate.

### BCBSM's Argument

BCBSM cites this language in the certificate in *Section 5: Mental Health and Substance*

#### *Abuse Managed Care Program:*

All mental health and substance abuse services are offered through the Mental Health and Substance Abuse Managed Care Program. Members are free to choose their provider from a select network of hospitals, physicians and other licensed facility or health care professionals.

The same section defines “eligible providers”:

- Psychiatrists
- Fully licensed psychologists
- Licensed master’s social workers\*
- Advanced practice psychiatric nurse\*
- Outpatient psychiatric care facilities
- Hospital-based and freestanding residential substance abuse facilities
- Outpatient substance abuse treatment programs
- Halfway houses\*

\* Services from these providers are payable in-network only.

Additionally, in *Section 10: The Language of Health Care*, “Professional Provider” is defined

as one of the following:

- Doctor of Medicine
- Doctor of Osteopathy
- Podiatrist
- Chiropractor
- Fully licensed psychologist
- Oral surgeon
- Other providers as identified by BCBSM

Based on the above language of the certificate, coverage for outpatient mental health services are only payable when rendered by an “eligible provider.” In the Petitioner’s case, her

psychological therapy was rendered by a limited license psychologist. BCBSM says services from a limited license psychologist are not a covered benefit whether provided in or out of network.

BCBSM disputes the Petitioner's contention that it led her to believe that care from a limited license psychologist would be covered. BCBSM says that its representative informed the provider's office on August 22, 2008, that care from a limited license psychologist was not covered. BCBSM says it has no record that the Petitioner was told in August 2008 that her care would be a covered benefit.

BCBSM says the Petitioner's mental health therapy was provided by a non-eligible provider and is therefore not payable under the certificate.

#### Commissioner's Review

The certificate language dealing with mental health care is clear. Only care provided by eligible providers is a covered benefit. A limited license psychologist is not listed as an eligible provider for the type of care the Petitioner received. Since the Petitioner's outpatient psychotherapy was provided by a non-eligible provider, it is not a covered benefit and BCBSM is not required to pay for the care.

The Petitioner argues that she was misled by BCBSM to believe that her care by a limited license psychologist was a covered benefit. BCBSM says it did not mislead the Petitioner or the provider's office. Although the Petitioner asserts that she called in August 2008, BCBSM says it has no record of such a call. Nevertheless, under the Patient's Right to Independent Review Act (PRIRA), the Commissioner cannot resolve those kinds of disputes. The PRIRA process, which employs a "paper hearing," does not allow the Commissioner to make findings of fact about what may have been said in a telephone call – it lacks the procedures necessary to make findings based on oral statements.

Moreover, even if it were true that the Petitioner was misinformed and acted in reliance on that information, that finding could not be the basis of a PRIRA decision because the Commissioner

is without authority to order equitable relief. Under PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered health care benefits under the terms of the applicable insurance contract and state law. In this case, the Commissioner finds that therapy from a limited license psychologist is not a benefit under the certificate.

It is unfortunate if the Petitioner was given incorrect information. However, under the terms of the certificate, XXXXX was not an eligible provider. Based solely on the terms of the certificate, the Commissioner concludes that BCBSM was correct in denying coverage for the Petitioner's psychological services.

The Commissioner finds that BCBSM correctly applied the provisions of the Petitioner's certificate of coverage.

**V  
ORDER**

BCBSM's final adverse determination of April 14, 2008, is upheld. BCBSM is not required to cover the Petitioner's psychotherapy provided by a limited license psychologist.

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 sixty 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.