

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. 111101-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 31st day of January 2011
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On April 1, 2010, 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 April 12, 2010.

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 April 20, 2010.

The issue in this external review can be decided by a contractual analysis. The contract here is BCBSM's *Individual Care Blue Plus Individual Market 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 suffers from chronic back pain experienced after spine surgery. He was prescribed the drug Opana ER by his doctor to deal with his pain. BCBSM denied coverage for this drug. The Petitioner appealed BCBSM's denial through its internal grievance process. BCBSM held a managerial-level conference on February 3, 2010, and upheld its denial in a final adverse determination dated February 16, 2010.

III ISSUE

Is BCBSM required to cover the Petitioner's prescription for Opana ER?

IV ANALYSIS

Petitioner's Argument

The Petitioner indicated that he lost his job because of his back problems and can't work without the prescription drug Opana ER. He says other medications put him to sleep. He noted that he tried morphine as an alternative medication with no success because he felt sick and fell asleep all the time.

The Petitioner would like BCBSM to be required to cover Opana ER medication for treatment of his condition.

BCBSM's Argument

BCBSM denied coverage because it is a "nonpreferred co-branded prescription drug" and the Petitioner's physician did not establish the necessity for Opana ER over any of BCBSM's preferred drugs. In its February 16, 2010, final adverse determination BCBSM stated:

Our pharmacy staff reviewed the additional documentation that was obtained from Dr. XXXXX's office and confirmed that the records did not support the necessary criteria that is required. As indicated in Section 6, Pages 6.3 and 6.4 of your *Individual Care Blue Plus Individual Market Certificate*:

Covered Drugs Obtained from a Panel Pharmacy

Co-branded Formulary Drugs

When a panel pharmacy fills a prescription for a co-branded drug, we will pay the pharmacy the approved amount for the preferred co-branded drug after deduction of your copayment. However, if the prescription is filled with a nonpreferred, co-branded drug, you will be responsible for the full cost of the drug unless the prescribing physician requests and obtains authorization for the nonpreferred drug from BCBSM's Pharmacy Services department.

The certificate (page 8.5) defines co-branded drugs as "chemically equivalent drugs sold under different brand names." BCBSM indicates that there are drugs that can be prescribed to address the Petitioner's pain that are included in its formulary of preferred drugs, including: Methadone, Oramorph SR, and MS Contin. Petitioner stated that he has had morphine prescribed for him but it was not successful. However, there is no indication that his physician prescribed any of the other preferred drugs.

BCBSM says it made several attempts (December 1, 2009, January 6, 2010 and January 26, 2010) to document whether the Petitioner's physician had tried, without success, the drugs covered by the certificate. The physician's responses did not provide any information regarding the trial and failure or contraindication of the formulary drugs.

It is BCBSM's position that it appropriately denied authorization for the nonpreferred drug Opana ER. Despite repeated requests to the Petitioner's physician for documentation regarding the trial and failure or contraindication of the formulary drugs, BCBSM did not receive any supporting documentation. BCBSM only received copies of the therapy notes. It does not even appear from the information provided that the Petitioner's doctor even prescribed any of the alternative formulary drugs to determine whether there were any adverse reactions or contraindications.

Commissioner's Review

The certificate language is clear that if a prescription is filled with a nonpreferred co-branded drug, the patient will be responsible for the full cost of the drug unless the prescribing physician requests and obtains authorization for the nonpreferred drug from BCBSM.

BCBSM established that the drug prescribed the Petitioner, Opana ER is a nonpreferred drug for the treatment of his pain. There are at least four other drugs on BCBSM's formulary of

preferred drugs that could address the Petitioner's pain. The Petitioner indicated that he had tried one of these drugs, morphine, and it made him sick and sleepy. However, there is no indication from the Petitioner or his physician that any of the other preferred drugs were tried or any reason why these drug were contra indicated for the Petitioner.

At least three times BCBSM contacted the Petitioner's physician office requesting information about formulary drugs the Petitioner had used or why the physician believed these drugs would not work. The physician provided copies of therapy notes but no information regarding the trial and failure or contraindication of formulary drugs. Therefore, the nonpreferred drug Opana ER prescribed the Petitioner was not authorized by BCBSM and is therefore not a covered benefit under the certificate.

The Commissioner finds that BCBSM's denial of coverage for Opana ER was consistent with the terms of the certificate.

**V
ORDER**

BCBSM's final adverse determination of February 16, 2010, is upheld. BCBSM is not required to provide coverage for the Petitioner's Opana ER prescription.

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.