

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 117013-

001

v

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
this 27th day of April 2011  
by R. Kevin Clinton  
Commissioner

**ORDER**

I  
**PROCEDURAL BACKGROUND**

On January 12, 2011, 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 January 28, 2011.

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 16, 2011.

The contract here is the BCBSM *Flexible Blue Group Benefits Certificate* (the certificate). Because medical issues were involved, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on February 22, 2011.

## II FACTUAL BACKGROUND

From April 23 through May 21, 2009, the Petitioner received residential (also called inpatient) substance abuse treatment at XXXXX, a substance abuse treatment facility in XXXXX. BCBSM denied coverage for the care at XXXXX, saying it was not medically necessary.

The Petitioner appealed BCBSM's denial through its internal grievance process. BCBSM held a managerial-level conference and issued a final adverse determination dated November 12, 2010, upholding its denial.

## III ISSUE

Did BCBSM correctly deny coverage for the Petitioner's inpatient substance abuse care provided from April 23 to May 21, 2009?

## IV ANALYSIS

### Petitioner's Argument

The Petitioner's doctor indicated that he has treated the Petitioner since March of 2009 for chemical dependency, the drugs of choice being opioids. Several outpatient ambulatory detoxifications with Suboxone were attempted, and referrals were made for outpatient treatment. Despite the fact that he contracted not to use drugs while he was using Suboxone, the Petitioner continued to use opioids in violation of his agreement. Consequently, he was ineligible to remain in outpatient detoxification treatment until he completed an inpatient program.

The Petitioner says he attempted to obtain preauthorization for his treatment at XXXXX but was told by the administrator of BCBSM's mental health program that no precertification would be given and the claims would be reviewed after he received treatment.

The Petitioner believes that his inpatient care at XXXXX was medically necessary and should be covered under the certificate.

BCBSM's Argument

It is BCBSM's position that the Petitioner's residential treatment at XXXXX was not medically necessary and therefore not a covered benefit.

BCBSM conducted several reviews of the Petitioner's medical records. Two reviews were conducted by Magellan Behavioral Health of Michigan, the administrator of BCBSM's mental health programs. Another review was conducted by Managing Care Managing Claims LLC. All these reviews concluded that the Petitioner's inpatient care was not medically necessary; BCBSM says he could have been treated in a less intensive setting as the signs and symptoms he exhibited did not satisfy the criteria for residential or inpatient care.

BCBSM believes that outpatient care was appropriate for the Petitioner and its denial of coverage for the Petitioner's admission at XXXXX was correct.

Commissioner's Review

The certificate, in "Section 3: Coverage for Hospital, Facility and Alternatives to Hospital Care," has this provision (pp. 3.2 – 3.3):

- For covered services to be payable, they must be medically necessary. .

**Note:** Medically necessary services that can be provided safely in an outpatient or office location are not payable when provided in an inpatient setting.

The certificate also says (p. 3.32):

We pay for treatment of substance abuse in participating<sup>1</sup> residential and outpatient settings. . . .

\* \* \*

The following criteria for the program must be met:

\* \* \*

- The services must be medically necessary for treatment of your condition. [Underlining added]

As it relates to facilities, the certificate (p. 7.14) defines "medically necessary" as:

Determination by physicians acting for BCBSM, based on criteria and guidelines developed by physicians for BCBSM who are acting for their respective provider type or medical specialty, that:

- The covered service is accepted as necessary and appropriate for the patient's condition. . . .

The question of whether it was medically necessary for the Petitioner to have residential or inpatient substance abuse treatment from April 23 to May 21, 2010, was presented to an independent review organization (IRO) for analysis as required by Section 11(6) of Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is board certified in psychiatry and has been in active practice for 15 years.

The IRO physician reviewer concluded that it was not medically necessary for the Petitioner to have been treated at an inpatient level of care. The IRO reviewer's report said in part:

The MAXIMUS physician consultant noted that on admission, the [Ppetitioner's] vital signs included a normal blood pressure of 123/58, a pulse of 86 and a normal temperature. The MAXIMUS physician consultant also noted that a physical examination on admission showed the [Ppetitioner] to be comfortable with equal pupils, normal deep tendon reflexes and clear skin. The MAXIMUS physician consultant indicated that the [Ppetitioner's] clinical withdrawal scale was low. The MAXIMUS physician consultant also indicated that the [Ppetitioner's] did not show signs of substance use or withdrawal. The MAXIMUS physician consultant explained that the [Ppetitioner] had no impairment, abnormality with vital signs or other need for acute observation at an inpatient level of care. The MAXIMUS physician consultant also explained that mental status evaluation on admission did not show that the [Ppetitioner] had any signs of intoxication or withdrawal. The MAXIMUS physician consultant noted that the [Ppetitioner] underwent withdrawal at another facility prior to this admission. The MAXIMUS physician consultant indicated that the [Ppetitioner] did not have a psychiatric condition requiring inpatient treatment. The MAXIMUS physician consultant explained that the [Ppetitioner] could have been safely and appropriately treated at a lower level of care during the period of issue in this appeal. [Citation omitted]

While the Commissioner is not required in all instances to accept the IRO's recommendation, it is afforded deference. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner

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1 The participation status of XXXXX was not an issue in this external review.

did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in this case.

The Commissioner accepts the conclusion of the IRO and finds that BCBSM's denial of coverage is consistent with the terms of the certificate and should be upheld.

**V**  
**ORDER**

BCBSM's final adverse determination of November 12, 2010, is upheld. BCBSM is not responsible for covering the Petitioner's care at XXXXX from April 23 to May 21, 2009.

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.

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R. Kevin Clinton  
Commissioner