

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. 117471-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 10th day of June 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On October 8, 2010, XXXXX, DC, authorized representative of XXXXX (Petitioner), filed a request for an 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.* On October 15, 2010, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

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 8, 2011.

Initially this case appeared to involve only contractual issues so the Commissioner did not assign it to an independent review organization (IRO) for review by a medical professional. Upon further evaluation, the Commissioner determined this case would benefit from review by an outside medical expert and assigned it to an IRO. On February 18, 2011, the IRO completed its review and sent its recommendation to the Commissioner.

II. FACTUAL BACKGROUND

The Petitioner receives health care benefits through MESSA, a BCBSM-underwritten group. His coverage is defined in the *MESSA Choices II Group Insurance for School Employees* benefit book.

The Petitioner has a history of cervical lordosis. His chiropractor requested authorization for a Denneroll neck orthotic (a.k.a., Denneroll chiropractic roll) to treat his condition. BCBSM denied coverage, saying the device did not meet the criteria for durable medical equipment.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM maintained its decision and issued a final adverse determination dated September 7, 2010.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's neck orthotic?

IV. ANALYSIS

Petitioner's Argument

The Petitioner says that the Denneroll neck orthotic is a cervical traction device, not a pillow, and is designed to support and enhance the cervical spine. There are specific instructions regarding its placement and the length of time it is to be used. According to the Petitioner, the device aids in the restoration of the natural cervical curve, resulting in a faster recovery. If the cervical spine is restored to normal ranges, there may be a decrease in the need for and cost of future treatment.

The Petitioner says there is extensive research which shows that the Denneroll device is beneficial in correcting abnormal cervical lordosis. His chiropractor says studies have shown an abnormal cervical curve can result in a number of health disorders including but not limited to headaches, neck pain, and decreased nerve, ligament, and muscle function.

The Petitioner believes the Denneroll neck orthotic is a benefit under his coverage and BCBSM is required to pay for it.

BCBSM's Argument

The Petitioner has coverage for durable medical equipment (DME). In *Section 8: Other Covered Health Care Services*, the benefit book says:

This section describes coverage for other health care services in addition to your facility and physician services.

* * *

Durable Medical Equipment

Covered services include the rental cost, not to exceed the purchase price, of durable medical equipment when prescribed by a physician. Benefits include items such as hospital beds and/or wheelchairs. Items such as air purifiers, whirlpools, air conditioners and exercise equipment are not covered.

The Petitioner's chiropractor says the Denneroll is a cervical traction device but BCBSM says it is a posture rehabilitation device and is not DME. In order for it to be billed as DME under BCBSM's agreement with the chiropractic profession, it must be an active mechanical device that has a measurable amount of tractive force applied as to cause axis traction of the spine. BCBSM says the Denneroll neck orthotic does not meet this criterion.

BCBSM further says that the Denneroll device does not have a HCPCS¹ code assigned, and it does not appear that the manufacturer has even applied for a HCPCS designation from the Centers for Medicare and Medicaid Services (CMS). Therefore, BCBSM says it is not currently recognized as DME. BCBSM says it only pays for equipment and supplies that are covered benefits for Medicare Part B. Without the appropriate HCPCS code and CMS approval, the Denneroll neck orthotic would not be covered by BCBSM as DME.

BCBSM and MESSA medical consultants also opined that the neck orthotic was not accurately billed by the Petitioner's chiropractor. The medical consultants said that CPT code EO855 was not intended to be used for such a device.

1 Health Care Procedure Coding System.

It is BCBSM's position that the denial of authorization for the Denneroll device is correct and in accordance with the terms of the Petitioner's coverage.

Commissioner's Review

The question of whether Denneroll meets the criteria for DME was presented to an independent review organization (IRO) for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6).

The IRO reviewer is an actively practicing chiropractor licensed in the states of XXXXX, XXXXX who is certified by the American Chiropractic Rehabilitation Board (ACRB III). The IRO reviewer is also a certified Chiropractic Extremity Practitioner (CCEP) and a NSCA certified Strength and Conditioning Specialist (CSCS). The IRO report said:

It is the determination of this reviewer that the Denneroll Chiropractic Roll is considered not medically necessary for the treatment of the [Petitioner's] condition and does not meet the criteria for DME.

* * *

Clinical Rationale for the Decision:

The Denneroll Chiropractic Roll is not clearly supported as medically necessary for [the Petitioner's] condition. The medical information provided does not clearly indicate significant functional or structural improvement or significant measurable symptomatic improvement with its use/prescription. Furthermore, while a forward head posture and decrease in cervical lordosis are considered postural/structural abnormalities, the [Petitioner's] medical condition (as presented) is without significant functional deficits to support the use of any specialized home care products such as the Denneroll Chiropractic Roll, exercise equipment, durable medical equipment or home traction unit (above and beyond typical activity modification advice and simple home exercises).

* * *

The Denneroll Chiropractic Roll is not considered durable medical equipment (DME). Standardized medical home traction units are typically mechanical and have variable force settings to control the amount of traction force applied (pounds) to the neck structures. The Denneroll Chiropractic Roll is not mechanical in nature, but is a solid wedge/curved type device placed under the spine in a supportive fashion, and unable to provide traditional control and measurement of traction forces through the spine for therapeutic purpose. It is reasonable to believe the Denneroll Chiropractic Roll is a posture rehabilitative support device and not a spinal traction device or other standard, medically purposeful durable equipment device. Therefore, the Denneroll Chiropractic Roll is not

considered durable medical equipment (DME).

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 expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in this case.

Therefore, the Commissioner accepts the IRO reviewer's conclusion and finds that the Denneroll device is not considered to be DME and is therefore not a benefit under the terms of the Petitioner's coverage.

V. ORDER

The Commissioner upholds BCBSM's September 7, 2010, final adverse determination. BCBSM is not required to provide DME coverage for the Denneroll device.

Under MCL 550.1915, any 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 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.

R. Kevin Clinton
Commissioner