

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

XXXXXX

Petitioner

v

File No. 119966-001-SF

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this 23rd day of August 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On March 10, 2011, XXXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it on March 17, 2011.

The Petitioner is enrolled for health care coverage as an eligible dependent through the XXXXXX Community Schools, a self-funded local government group that is administered by Blue Cross Blue Shield of Michigan. Act 495 authorizes the Commissioner to conduct external reviews for individuals with this type of coverage in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

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 March 21, 2011.

The issue in this external review can be decided by a contractual analysis. 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's health care benefits are defined in the BCBSM *Community Blue Group Benefits Certificate* (the certificate).

The Petitioner requested pre-authorization from BCBSM for a Tempur-Pedic "bed system," but BCBSM denied the request stating it is not a covered benefit under the certificate.

The Petitioner appealed BCBSM's denial through its internal grievance process. BCBSM held a managerial-level conference on January 6, 2011, and issued a final adverse determination dated January 18, 2011.

III. ISSUE

Is BCBSM required to authorize a Tempur-Pedic bed system for the Petitioner?

IV. ANALYSIS

Petitioner's Argument

In August 2010 the Petitioner had extensive spinal surgery, with multi-level fusions and the placement of rods, screws and cages to treat advanced spinal stenosis, disc herniation, and vertebral instability. Following the surgery, he experienced an inability to obtain quality sleep with a conventional mattress; he states he cannot sleep for more than short periods, often as little as an hour or two at a time due to severe pain. Consequently, his orthopedic surgeon prescribed a Tempur-Pedic bed system.

The Petitioner indicated that BCBSM initially denied his request because he sought to purchase the bed system from a furniture store and not a BCBSM-qualified provider. He states that when he located a qualified provider and gave BCBSM all the necessary billing codes, authorization was still denied on the basis that the Tempur-Pedic bed system was not medical in nature.

The Petitioner believes the bed system is medical in nature and will continue to be permanently useful to support and align his spine to alleviate pain. He believes that the Tempur-Pedic bed system is covered under the certificate.

BCBSM's Argument

The certificate (p. 7.7) defines durable medical equipment (DME) as:

Equipment that can withstand repeated use and that is used for a medical purpose by a patient who is ill or injured. It may be used in the home.

BCBSM indicates that DME is covered in Section 5 of the certificate (p. 5.2 - 5.3). The certificate contains the following provision regarding DME:

We pay our approved amount for rental or purchase of durable medical equipment when prescribed by a physician or certified nurse practitioner and obtained from a DME supplier who meets BCBSM qualification standards. In many instances we cover the same items covered by Medicare Part B as of the date of purchase or rental. In some instances however, BCBSM guidelines may differ. . . .

* * *

We do not pay for:

- Exercise and hygienic equipment . . .
- Deluxe equipment, such as motorized wheelchairs and beds, unless medically necessary and required so that patients can operate the equipment themselves
- Comfort and convenience items, such as bed boards, bathtub lifts, overbed tables, adjust-a-beds, telephone arms or air conditioners
- Physician's equipment, such as stethoscopes
- Self-help devices not primarily medical in nature, such as sauna baths and elevators
- Experimental equipment

BCBSM states the certificate excludes coverage for comfort and convenience items such as adjust-a-beds and for items that are not medical in nature. Tempur-Pedic bed systems are not classified or advertised as medical equipment - - they are manufactured for sale to the general public in furniture stores and on-line.

BCBSM indicates it is not enough that the Petitioner's doctor recommended a Tempur-Pedic bed system. The bed system must be primarily medical in nature and not useful in the absence of illness or injury.

BCBSM argues that the Tempur-Pedic bed system is not a covered benefit under the certificate.

Commissioner's Review

The certificate covers DME if certain conditions are met and the Petitioner appears to have some of those conditions: the Tempur-Pedic bed system was prescribed by a physician and it was available from a BCBSM qualified provider. However, the certificate excludes comfort and convenience items such as bed boards, adjust-a-beds, and items that make a mattress firmer

and more comfortable. The Tempur-Pedic bed system is an item that makes it more comfortable to sleep and is therefore excluded as a benefit.

There is nothing inherently medical about the bed system. This does not mean that the Petitioner would not benefit from the Tempur-Pedic bed system or that its use would not make it easier for him to sleep. However it does mean that that since this type of item is excluded in the certificate that BCBSM is not required to pay for it.

V. ORDER

Therefore, BCBSM's final adverse determination of January 18, 2011, is upheld. BCBSM is not required to authorize or cover the Petitioner's Tempur-Pedic bed system.

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 60 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, P.O. Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner