

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

v

File No. 120173-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 26th day of August 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On March 22, 2011, 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 (PRIRA), MCL 550.1901 *et seq.* On March 29, 2011, after preliminary review of the material submitted, the Commissioner accepted the request.

The issue in this external review can be decided by a contractual analysis. The contract here is the *Community Blue 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 has a history of post-polio syndrome and scoliosis. Because of this condition, Petitioner requires the use of a power wheelchair to live independently. Since her weakness and scoliosis have progressed, her physician prescribed a power wheelchair with a power seat elevation feature to accommodate her needs. BCBSM denied coverage for the seat elevation feature. The provider's charge for the elevation feature is \$1,895.

Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on January 19, 2011, and issued a final adverse determination on January 26, 2011, affirming its denial.

III. ISSUE

Did BCBSM properly deny coverage for the seat elevation feature of Petitioner's wheelchair?

IV. ANALYSIS

Petitioner's Argument

In support of Petitioner's request, her physician wrote the following in a letter of October 7, 2010:

[Petitioner] is currently under my medical care and suffers from post-polio syndrome and scoliosis resulting in hypotonic lower extremities, weakness of upper extremities and inability to stand. [Petitioner] is independent with ADL's, independent with powermobility and requires assistance to complete advanced ADL's for things such as house cleaning. Recently [Petitioner] has gotten a new wheelchair for which the seat elevation feature was not covered. This letter is to document/explain the medical necessity of the seat elevation feature. The seat elevation feature allows [Petitioner] with her limited strength to independently transfer by allowing her to achieve a slightly elevated position compared to the object to which she is transferring so that gravity helps her shift/slide her weight. These transfers are necessary from chair to bed, to toilet, to shower bench, to transfer chairs at pool and exam tables in doctors' offices. The seat elevation feature also allows her to reach items on higher shelves from the refrigerator and grocery shelves.

In short, the seat elevation feature is necessary to allow [Petitioner] to continue to live independently. . . .

BCBSM's Argument

In its January 26, 2011, final adverse determination BCBSM wrote:

At the time of service, you were covered by the *Community Blue Group Benefits Certificate*. Page 5.3 explains that we do not pay for lifts. Thus, lifts in relation to the durable medical equipment benefit category are specifically excluded from coverage.

In its position paper submitted for this review, BCBSM wrote:

Wheelchair seat elevation features such as this are considered comfort and convenience items, and do not comport with the BCBSM Medical Policy on durable medical equipment. The use of the terms comfort and convenience are not intended to lessen or diminish the nature of either [Petitioner's] condition or the service provided; it is simply an indication that the service or item is not medically necessary in that there is no evidence that it offers clinically significant benefits.

Commissioner's Review

Page 5.2 of the certificate describes the coverage for 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, such as exercycles, Moore Wheel, bidet toilet seats and bathtub seats
- 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
- Physicians equipment, such as stethoscopes
- Self-help devices not primarily medical in nature, such as sauna baths and elevators
- Experimental equipment

The Medical Policy referenced in BCBSM's position paper includes this definition of durable medical equipment:

Durable medical equipment (DME) is defined as equipment which:

- Can withstand repeated use
- Is primarily used to serve a medical purpose
- Is generally not useful to a person in the absence of illness, injury or disease
- Is appropriate for use in the member's home . . . AND
- Is requires [sic] and is prescribed by a licensed physician

Because the seat elevation feature is not used for a medical purpose, is not primarily medical in nature, and because other similar lifting aids such as elevators and bathtub lifts are explicitly excluded from coverage, the Commissioner upholds BCBSM's final adverse determination.

V. ORDER

The Commissioner upholds BCBSM's January 26, 2011, final adverse determination. BCBSM is not required to provide coverage for the power seat elevation feature.

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