

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. 120484-001

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 April 7, 2011, XXXXX, on behalf of his minor daughter XXXXX (Petitioner), filed a request for external review. The request was filed under Public Act No. 495 of 2006, MCL 550.1951 *et seq.*, which authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. The Petitioner receives health care benefits as a dependent of her father's employer, the City of XXXXX. The City of XXXXX benefit plan is a self-funded plan whose terms and conditions are described in the Blue Cross Blue Shield of Michigan's (BCBSM) *Community Blue Group Benefits Certificate* (the certificate).

Under Act 495, reviews are conducted in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On April 14, 2011, after preliminary review of the material submitted, the Commissioner reviewed the accepted the request.

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 has a history of neuroaxonal dystrophy, a neurological condition that requires her to use a wheelchair for mobility. Because she now weighs over 100 pounds and is 49 inches tall, it is difficult to transfer Petitioner in and out of vehicles. Her physician prescribed a wheelchair lift to facilitate her transport. BCBSM denied coverage for the wheelchair lift ruling that this item is not reimbursable as durable medical equipment (DME) under the terms of the certificate. The cost of the lift is \$12,070.

Petitioner appealed the denial of the lift through BCBSM's internal grievance process. BCBSM held a managerial-level conference on March 9, 2011, maintaining its decision and issued a final adverse determination dated March 17, 2011.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's wheelchair lift as DME under the terms of the certificate?

IV. ANALYSIS

Petitioner's Argument

The Petitioner's father believes BCBSM should provide coverage for the wheelchair lift because it is medically necessary to safely transport Petitioner to medical appointments, therapies, school, and any other family activities or functions. In support of her request for the lift in a letter dated January 10, 2011, Petitioner's physician wrote:

[Petitioner] is a nearly XXXXX year old female with a diagnosis of neuroaxonal dystrophy. Because of this diagnosis, she is completely dependent for all activities of daily living. She uses a wheelchair to get out in the community. [Petitioner] is driven to and from school daily, has multiple therapy appointments per week, and sees a number of specialist physicians because of her multiple medical problems. Additionally, [Petitioner's] family is active in the community. Currently, the [Petitioner's family] has to transfer [Petitioner] out of her custom seating system and wheelchair into a car seat each time they take her out into the community. The transfer is difficult because [Petitioner] is growing rapidly and needs total assistance. [Petitioner] has had a rapid growth spurt in the past year and a half. She is almost as big as her mother and the transfers are becoming more difficult and dangerous. Additionally, her car seat does not provide the kind of support that she gets in her custom seat in her wheelchair.

For the above reasons, I recommend that [Petitioner] be transported in her wheelchair. Her parents would need a wheelchair lift for that. Please consider covering the wheelchair lift for the van so that [Petitioner] can be safely transported.

BCBSM's Argument

In its March 17, 2011, final adverse determination BCBSM wrote:

You are enrolled for coverage under our *Community Blue Group Benefits Certificate*. Pages 5.2 and 5.3 of the certificate indicate:

Durable Medical Equipment

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 . . .

Our medical consultants reviewed the documentation submitted. They confirmed that the item is not a reimbursable DME item. As a result, we are unable to grant approval.

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

Wheelchair lift systems 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

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 wheelchair lift is not used for a medical purpose and is not primarily medical in nature, the Commissioner upholds BCBSM's March 17, 2011, final adverse determination.

V. ORDER

The Commissioner finds that BCBSM is not required to provide coverage for the requested wheelchair lift.

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