

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING & 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. 121264-001**

**Blue Cross Blue Shield of Michigan**

**Respondent**

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

**ORDER**

**I. PROCEDURAL BACKGROUND**

On May 10, 2011, XXXXX, authorized representative of her minor son 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.* On May 17, 2011 after preliminary review of the material submitted the Commissioner reviewed the accepted the request.

The Petitioner has group health care benefits underwritten by BCBSM. The terms of his coverage are contained in BCBSM's *Community Blue Group Benefits Certificate* (the certificate).

Because this appeal involves a medical question, the Commissioner assigned the case to an independent medical review organization which provided its analysis and recommendation on May 31, 2011.

**II. FACTUAL BACKGROUND**

The Petitioner has spinal muscular atrophy. Because of this condition, Petitioner is unable to walk and requires the use of a wheelchair. His physician prescribed a power wheelchair with a seat elevation feature. BCBSM provided coverage for the wheelchair but

denied coverage for the power seat elevation feature ruling that this feature is a comfort or convenience feature that is excluded from coverage under the terms of the certificate.

Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on March 10, 2011, and issued its final adverse determination on March 15, 2011, affirming the denial. The amount in dispute is \$2,800.

### **III. ISSUE**

Did BCBSM properly deny coverage for the Petitioner's seat elevation feature as not medically necessary?

### **IV. ANALYSIS**

#### Petitioner's Argument

The Petitioner's mother believes BCBSM should provide coverage for seat elevation feature because it is medically necessary for Petitioner's functional and mobility needs. In a letter to BCBSM dated January 29, 2011, she wrote:

XXXXXX is a XXXXX year-old boy that has been diagnosed with Spinal Muscular Atrophy (SMA). This disease causes extreme muscle weakness in all extremities. It is a permanent condition. Due to this weakness, XXXXX is not able to walk and he therefore requires his wheelchair to meet his functional and mobility needs.

Children with Spinal Muscular Atrophy have above normal intelligence and being without mobility has severely limited XXXXX's access to his environment. It is essential for XXXXX's normal development that he be able to perform tasks independently and to explore and interact with his environment. Not having a Power Seat Elevation System feature on his power wheelchair does not allow XXXXX the freedom of movement that children without disabilities are allowed, inhibiting his ability to interact with children on his own age on a social level. The Power Seat Elevation System will enable XXXXX to be at peer height and will also allow for the appropriate seat heights for varied school activities.

Most importantly, the Power Seat Elevation System is a medical necessity. . . . In addition to the other features of the power chair, XXXXX's neurologist specifically prescribed the Power Seat Elevation System to assist with XXXXX's medical treatments.

This height elevation feature assists with XXXXX's medical treatments by allowing him access to medical exam tables and x-ray tables. It is also required to provide varied seat heights for multiple environments, which along with medical

treatments in doctor offices, hospitals and specialty clinics, assists with XXXXX's transfers, minimizing the chance of injury to XXXXX and of serious back injury to me, his caregiver, as well as other personnel responsible for completing XXXXX's transfers.

Finally, it also a safety concern, as XXXXX is not able to reach the wheelchair access door opener pads located in and outside of all buildings, nor is he able to reach sinks to wash his hands or reach items above his head in his school locker, on counter tops, etc. This feature is also an aid for visual scanning while driving so he can see all around him.

### BCBSM's Argument

In its March 15, 2011, final adverse determination BCBSM denied coverage for the seat elevation feature:

Our medical staff reviewed the documentation pertaining to XXXXX's seat elevation system. Based on that review, it was determined the elevation system is primarily used for ease of interaction with others and does not meet the medical indication.

You are covered under the *Community Blue Group Benefits Certificate*. As explained on Page 5.3 of the Certificate:

We do not pay for:

- Comfort and convenience items, such as bed boards, bathtub lifts, overbed tables, adjust-a-beds, telephone arms or air conditioners
- Self-help devices not primarily medical in nature, such as sauna baths and elevators

Additionally, Page 7.7 defines Durable Medical Equipment as "Equipment that can withstand repeated use and that is used for a medical purpose. . ."

Because the seat elevation system is not used for a medical purpose and is not primarily medical in nature, we are unable to approve reimbursement and you remain liable for the charge.

### Commissioner's Review

While the seat elevation feature was prescribed by the Petitioner's physician and will enhance the Petitioner's ability to function independently, it may not be covered if the feature is excluded under the terms of the certificate. The certificate, page 5.2, includes the following provision:

### **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

To resolve the question of whether BCBSM properly excluded coverage for the seat elevation feature, the Commissioner requested analysis of the issue by an independent medical review organization (IRO), as provided in section 11(6) of the Patient's Right to Independent Review Act. The IRO reviewer is a physician who is board certified in pediatric neurology, holds an academic appointment, and has been in practice for more than 15 years. The reviewer's report included the following analysis:

[S]pinal muscular atrophy is a severe neuromuscular disorder that is usually progressive and limits mobility and movement. . . . [A]n electric wheelchair is essential to allow mobility for patients with spinal muscular atrophy. . . . [T]he power seat elevator feature provides a number of conveniences, including allowing for reach of switches, ease of transfers and being at eye level with peers. However, . . . the power seat elevator is not medically necessary because it is not used for a medical purpose and is not primarily medical in nature.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's 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 extensive

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

The Commissioner finds that BCBSM's denial of coverage for the seat elevation feature is consistent with the terms of the Petitioner's coverage under the certificate.

**V. ORDER**

The Commissioner upholds BCBSM's March 15, 2011, final adverse determination. BCBSM is not required to provide coverage for the 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.

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R. Kevin Clinton  
Commissioner